

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawaii

REF:OCCL:DH

CDUA: HA-3447

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May 9, 2008

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: To Restore and Rebuild the 1893 "Nameless" Fishpond - Referred to as "Kapoho Fishpond"

AGENT: Farber Associates, 2722 Ferdinand Avenue, Honolulu, Hawaii, 96822

LANDOWNER: John Barsell, RR 2, Box 3933, Pahoa, Hawaii, 96778

LOCATION: Kapoho Bay, Kapoho Ahupuaa, Puna District, Island of Hawaii

TMK: (3) 1-4-002:036

AREA OF USE: 4 Acres

SUBZONE: Resource

DESCRIPTION OF AREA/CURRENT USE:

The nameless fishpond at Kapoho has no name attached to it but it is referred to as the "Old Lyman" pond. For reference purposes the applicant refers to it as Kapoho Fishpond. The fishpond is a private 4 acre fishpond located in state-owned waters and submerged land, in Kapoho Bay, Puna District, Island of Hawaii.

The fishpond is located within the 13 acre subject parcel's metes and bounds within the Kapoho Beach Lots subdivision. Access to the fishpond is from the subject parcel and/or the ocean thus access is restricted. The fishpond is considered submerged lands that are privately owned¹; the fishpond is located within the State Land Use (SLU) Conservation District, Resource subzone. (Exhibits 1, 2 & 3).

¹ Staff notes according to submitted documents it appears the fishpond is privately-owned.

PROPOSED USE:

The landowner is proposing to restore and rebuild the 4.3 acre Type I, *Loko Kuapa* "Kapoho Fishpond" fishpond.

The makaha will not be gated to allow the marine life access in and out of the fishpond. The restoration and rebuilding of the fishpond will involve the repair of the fishpond walls and makaha (sluice gates) and periodic post-repair maintenance of the wall and basin. The proposed project will produce a continuous fishpond wall, approximately 1,250 feet in length with a base width of 10 to 12 feet; tapering to a crown width of 5 to 6 feet. Restoration will follow the original wall alignment. The outside slope of the wall will be at a 20 degree angle and the inside slope will be at a 10 to 15 degree angle. Stone rebuilding material is available onsite in the existing fishpond wall footprint, immediately adjacent to the pond wall, within the fishpond basin; additional rock will be obtained from local quarries (**Exhibit 4**).

Current Uses

According to the applicant, the fishpond had deteriorated and is not submerged at high tide. The fishpond is not actively being used.

Natural Environment

The fishpond is located at Kapoho Bay, Puna District, south of Cape Kumukahi the most eastern point on the Big Island. The Puna District is a rural area consisting of SFR's, and agricultural use(s). The Kapoho area lies within the active East Rift Zone of Kilauea volcano.

The fishpond lies makai of the former village of Kapoho in the Kapoho Beach Subdivision lots in submerged lands. The applicant notes the many of the SFR's are situated atop a low lava flow barely above sea level. Many of these are pitted with saltwater filled depressions, some which may be fed by fresh geothermal heated springs.

The fishpond is located on an inshore-submerged pahoehoe lava platform that was historically modified as a loko kuapa (solid wall) styled fishpond. The fishpond walls have deteriorated; damaged by nature. The fishpond waters mauka and adjacent land are inundated with mangrove. The intact makaha, which represents the original height to the wall, is now submerged at medium high tide. Rocks used to rebuilt the fishpond wall can be found within the general vicinity of the original wall and on the subject parcel.

Current water bathymetry is 4 to 6 feet within the fishpond. Water depth makai of the seawall averages 3 to 8 feet. The fishpond basin is a relatively uniform shelf of smooth pahoehoe type lava, small rocks, sand, turf algae, crustose (coralline) algae and minute amounts of live lobe coral (*Porites lobata*). Marine algae associated with the fishpond lie within two distinct zones: 1) algae associated with the fishpond basin (*Acanthophora*

spicifera, Gracilaria salicornia), and 2) species that are adapted to high-energy wave and surge prone areas (Coralline red algae, turf algae).

The area is located within the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area and within the Civil Defense Tsunami Inundation Zone; an area vulnerable to coastal flooding from storm waves, hurricanes, and tsunamis. The subject property straddles Hazard Zones 1 and 2. The subject property is also located along the south flank of Kilauea Volcano; where a series of coastal fault lines paralleling the Eastern Rift Zone trigger ongoing seismic activity.

Water quality in Kapohi Fishpond is generally high with near shore oceanic conditions prevailing. Water quality testing indicated: clear waters, lack of siltation due to a uniform hard rock lava bottom and shoreline and low salinity count due to fresh ground water discharges.

Prevailing water currents flow perpendicular into the fishpond wall and basin toward the shoreline (west-northwest to southeast) during normal trade conditions. Current intensity depends on the tides and winds. Trade winds are the norm so the wind is expected to have some influence on pond water turnover. There are basalt groundwater springs located in the southwest corner of the fishpond basin that also contribute to the water currents.

Due to overfishing and the 1960 lava flow into Kapoho Bay the marine environment has yet to recover. Studies indicate there is a lack of diversity of species in the area and the overall numbers are low. Inside the fishpond fish numbers are less. **Exhibit 5** shows fish that have been observed.

The applicant notes there are no Federal or State listed rare, endangered or threatened of flora and/or fauna found on the subject parcel surrounding the fishpond. The Hawaiian Green Sea Turtle (*Chelonia mydas*) is federally listed as threatened under the U.S. Endangered Species Act of 1973, and is known to forage and rest in shallow waters in and around Kapoho Fishpond. The Hawaiian monk seal (*Monachus schauinslandi*) has been seen in and around Kapoho Fishpond.

Historic

Historical resources in the area indicate the fishpond is 100 years old. It is thought to be constructed before 1893. Oral testimony and field observations indicate the fishpond had been maintained and improved during the early to mid-twentieth century. The fishpond is can be considered historically significant from three out of four National Register Criteria. Cultural practices existed with trapping fish and fishing, and working the fishpond for productive use.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands (OCCL) consulted the following agencies: Department of Land and Natural Resources (DLNR) – Division of Conservation and Resource Enforcement (DOCARE), Historic Preservation Division (HPD), Engineering Division (ED), Division of Forestry and Wildlife (DOFAW), Division of Aquatic Resources (DAR), State Parks Division, Hawaii District Land Office (HDLO), Department of Health (DOH), Office of Environmental Quality and Control (OEQC), Office of Hawaiian Affairs (OHA), County of Hawaii, Department of Planning, Hawaii County Office of the Mayor, Hawaii County Council, Hilo Public Library, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, US Geological Survey. The following comments were received:

Division of Forestry and Wildlife

No Comment

State Parks Division

No Comment

Division of Conservation and Resources Enforcement

No Comment

Division of Aquatic Resources

DAR is concerned about two invasive macro algae that are present at the fishpond; more quantitative surveys should be conducted inside and outside the fishpond to gather data. The project should minimize the algae dispersal by preventing disturbance (fragmentation) of the two algae to reduce the spread along the coastline, specifically to Waiopae Marine Life Conservation (MLCD).

Applicant Response: We also acknowledge your request to minimize disturbance (fragmentation) to prevent algae dispersal. We plan to conduct a survey of the Kapoho Fishpond complex for the presence and abundance of invasive algae. If they occur in significant abundance, measures will be taken to discourage spread of the algae outside of the bay. In-the-pond mechanical effects of rolling and dropping rocks, foot trampling, and movement of cut mangrove trees could potentially fragment brittle seaweed clumps, thereby increasing spread potential. Workers daily will conduct a snorkel survey of the water area immediately surrounding the day's target work area and remove all clearly visible weed algae clumps, transporting that material in fine mesh bags to suitable land disposal areas.

Office of Hawaiian Affairs

OHA appreciates the applicants plan to restore the fishpond, and use it as a no-fish marine sanctuary. Please consult with marine experts who could provide information on whether leaving the makaha open is the best method to help restock the area's dwindling fish populations. Please answer questions raised in the acceptance letter 1) identity and scope of "valued cultural, historical and natural resources" in the area, including the

extent to which traditional and customary native Hawaiian rights are exercised in the area; 2) the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and 3) the feasible action, if any, to be taken by the Board of Land and Natural Resources to reasonably protect native Hawaiian rights if they are found to exist. Lastly, OHA appreciates the Cultural Impact Statement, however please conduct a more detailed analysis with mitigation measures to be included in the FEA to address question number 3. We look forward to the project's Archeological Preservation Plan when it is completed.

Applicant Response: We have consulted with marine experts. Leaving the fishpond makaha open, ungated, is the best way to serve the needs of all the aquatic life that utilize the protected waters of the fishpond. Leaving the makaha open with a ban on fishing in the fishpond will provide a productive, nutrient rich and protected body of water for juvenile fish to feed and grow until they return to the ocean to reproduce. Gating the fishpond would exclude the movement of the Hawaiian Green Turtles into and out of the fishpond—which frequent the fishpond in large numbers.

Regarding further analysis with mitigation measures regarding potential impacts the project may have on Native Hawaiian Traditional and customary rights. This three-prong disclosure was mandated by the Hawai'i Supreme Court (Ka Pa akai O Ka Āina vs. Land Use Commission, 94 Haw. 31, 47 [2000]). Based on information gathered including personal interviews, field visits and a review of past literature, as detailed in the Cultural Impact Assessment, Appendix B, page 101 of the Draft Environmental Assessment, the following conclusions can be made about cultural resources and practices, the potential impacts to those resources and practices and mitigation efforts.

Regarding the question number 1 to explain the identity and scope of "valued cultural, historical and natural resources" in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area:"

Cultural resources in the project area include the fishpond and the features associated with it (fishpond wall, mākāhā, springs, pua ponds, limu, fish (anae, awa, aholehole), turtles. Historical resources in the area include the fishpond (fishpond wall and mākāhā) that is estimated to be at least 100 years old and is an excellent example of a loko kūapa style fishpond. It is one of the best-preserved fishponds in East Hawai i and an exceptional and unique example of the architectural achievements by Hawaiian fishpond builders. Natural resources include the fishpond waters, springs, native plants, fish, limu and turtles. Immediately adjacent to the project area natural resources include Kapoho Bay and all the features associated with it (coral reefs, fish, limu, turtles, etc).

Cultural Practices exist in the form of fishing and trapping fish within the fishpond. Other cultural practices exist in the form of working in the fishpond, reviving this fishpond back to productive use. At the moment this consists of the clearing of invasive mangrove from within the fishpond basin and shoreline. The second phase of this restoration project will involve rebuilding the fishpond wall, preserve and maintain it for long-term use as a marine preserve (the purpose of this EA is to obtain approval to

conduct this phase two). Immediately adjacent to the project area cultural practices revolve around traditional uses associated with the shoreline and waters of Kapoho Bay that include padding, boating, gathering, fishing (net, spear, line).

Regarding the question number two to explain, "the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action."

There are no known historic, cultural or natural resources within the immediate vicinity of the project that may be adversely impaired as a result of the proposed project. We feel this proposal will only enhance, protect and develop culturally significant practices and traditional resources in the area. The project proposal will revive a fishpond that was previously derelict and extensively inundated with mangrove. The work is being undertaken by a group consisting of mostly Native Hawaiians. In fact, the project foreman's great uncle helped build the original wall and makaha. The restored fishpond will be managed as a fully functioning historic fishpond and it will again be a productive site for the propagation and grow-out of traditional species such as ānae, awa, aholeahole. Because the fishpond will be a marine reserve, no large-scale fish harvesting allowed, the fishpond will in be in effect a nursery and will help restock the larger waters of Kapoho Bay—thus enhancing traditional fishing and gathering practices in the waters adjacent to the fishpond.

Associated with potential cultural impacts is the issue of access to these resources. The exclusive control over the waters (and the fish) inside the fishpond is consistent with traditional custom and cultural practices that have always considered fishponds, their waters and the animals therein as private property of the fishpond owner. Those using the waters and shoreline of Kapoho Bay for traditional customary practices do not, in general, access those areas through the subject property as it is developed and contains the single-family residence of the applicant. The proposed project will not change or affect the existing access points to Kapoho Bay and its shoreline.

Regarding the question number three to explain, "the feasible action, if any, to be taken by the Board of Land and Natural Resources to reasonably protect native Hawaiian rights if they are found to exist:"

This project embodies the notion of not only protecting native Hawaiian rights, but also enhancing them. This project is about malama aina, the stewardship and protection of a nearly lost cultural treasure. Rebuilding and maintaining the fishpond will revive many cultural practices nearly lost, particularly in this region, and passing these practices on to the next generation. Measures to be taken to protect Native Hawaiian rights are to allow this proposal to move forward, so we can continue our work. To protect the traditional and customary practices and rights of Native Hawaiians, one must protect the cultural and natural resources upon which these practices depend. Granting the permits so we can restore and reuse this fishpond is an important step in fulfilling that goal.

Department of Health
Environmental Management Division

The Department notes the Army Corps of Engineers should be contacted to identify whether: 1) a Federal license or permit is required (Department of Army permit, Section 401 Water Quality Certification); and 2) a National Pollutant Discharge Elimination System (NPDES) general permit (and Notice of Intent (NOI) and/or an individual NPDES permit is required for the proposed project. Any project and its potential impacts to State waters must meet HAR, Section 11-54-1.1, Antidegradation Policy and 11-54-3, Designated Uses, and comply with the State's Water Quality Standards.

Applicant Response: We acknowledge your letter regarding the Clean Water Branch standards, and that the Army Corps of Engineers should be consulted. The fishpond will be restored for cultural and historic preservation purposes and to serve as a marine sanctuary (no fishing zone) to help replenish the depleted fisheries of the larger Kapoho Bay area. The proposed project will not negatively impact the existing uses and level of water quality necessary to protect the existing uses of the receiving state waters (HAR, 11-54-1.1).

Office of Environmental Quality and Control

OEQC notes to correct the spelling/grammatical errors and page numbers, explain whether fishpond wall allow water to breach the top of the wall at extreme high tides as designed, supply of rocks from the subject parcel, whether a Special Management Area (SMA) permit is required, access egress and ingress for marine mammals through the makaha, fishpond wall and ocean current and tides.

Applicant Response: The proposed rebuilding of the fishpond wall as designed will allow water to breach the wall at extreme high tide (also known as spring tides), which will occur around the full and new moon. In this region spring tides top out at about 2.3 feet height with average high tides about 2 feet height; mean tide level is 1.1 feet. The wall will be rebuild at a uniform height of six feet, which relative to the tidal range, is about the 2-foot high tide mark. The wall is being rebuilt one-foot higher than the makaha (and thus the height of the original wall) to compensate for the fact that the entire Kapoho Bay area including the fishpond has sunk over the years due to earthquakes and its location.

The wall configuration is a reasonable compromise between creating a functioning fishpond with a protected body of water for fish, other aquatic life to develop and grow, and the resources required to rebuild the wall. Fishpond walls were never absolutely sealed; they were designed to be somewhat porous, to relieve the tide pressure, surf action, to allow the movement of aquatic life to pass through.

An important component of a functioning fishpond is the utilization of tidal shifts and the water currents they create moving through the fishpond makaha and into and out of the fishpond basin. During higher tides, portions of the fishpond wall are underwater providing access for marine animals. Access over the wall is periodic and happenstance. Strong currents and the detection of a large column of nutrient rich brackish water are

what attract marine animals. With an intact wall and makaha the water currents will be stronger than what now exists and thus provide an improved means for marine life to find their way into and out of the fishpond. Seawater flowing into the pond brings microscopic plants and animals that provided food. Baby fish or pua, other fish species, marine mammals also enter the makaha. Out-going waters contain a rich combination of brackish water rich with microorganisms that serve as food for the reefs, grown fish move out onto the reefs and open ocean to spawn and other marine animals exit the fishpond.

The southern portion of the fishpond wall lies furthest makai, and closest to edge the reef flat; it is exposed to more wave energy and currents than the rest of the wall. Years of neglect in maintaining the fishpond wall, and wave energy have pushed the wall rock mauka. The footprint of the wall is clearly visible and most of the rocks from this portion of the wall are located within the fishpond basin.

The wall will be constructed to withstand and absorb strong ocean waves and tidal energy by designing the wall: 1) with a sloping face of between 15 to 20 degrees; 2) to be solid, but porous, allow the percolation of seawater, thus allowing wave energy to be absorbed and dissipated. Ongoing maintenance of the wall will be required. The restored makaha gate and wall combined with clearing mangrove from the shoreline and fishpond basin will provide much improved access for marine mammals to the shoreline. The restored wall and makaha will improve passage of marine life into and out of the fishpond.

The removal of alien mangrove in the pond system has exposed the old pahoeheo shoreline creating an ideal haul-out and sun basking substrate for the turtles, protected from surf action, dogs and humans.

Lastly, rocks will not be taken from the dry land property to preserve the existing shoreline configuration and property topography. Rocks to rebuild the wall are found adjacent to the fishpond wall footprint. To raise the wall to the proposed uniform height of 6 feet, we estimate a one-foot cap of additional rocks along the length of the wall will be needed. This calculates: 1,250 foot wall length x 5.5 feet wall width x 1 foot height = 6,875 cubic feet (255 cubic yards) of additional rock. Any required additional rock will be purchased from a local quarry and be of the same uniform size as the existing rocks. The rocks will be washed and clean of any excessive dirt and/or debris before being trucked on-site. The rocks will be brought out to the wall via a floating pontoon platform and placed on the wall by hand.

Hawaii County Department of Planning

DLNR should provide clarification where the shoreline would be certified. This would clarify if the rocks to be used to restore the wall will be taken from within the 40-foot shoreline setback area, and whether a Shoreline Setback Variance Permit or Special Management Area (SMA) permit would be required. In the current SMA permit 2/15/2005 is the trimming and maintenance of the mangrove along the shorelines and ponds; using hand tools and chainsaws. Please indicate what changes to the natural shore

may occur as result of the project. We recommend an interview with Minnie Kaawaloa be conducted to obtain more complete information on when the fishpond wall was constructed.

Applicant Response: The landowner will use rocks from the footprint of the fishpond wall and from local quarries to reduce the need for a Shoreline Setback Variance Permit or Special Management Area (SMA) permit. The OCCL was consulted: the position is since we will not be disturbing the shoreline, said shoreline contains no sandy beach areas and is composed primarily of smooth solid pahoehoe type lava, basalt rocks and boulders, a Certified Shoreline Survey is not required.

Minnie Ka awaoloa has been interviewed and her recollections as to when the fishpond was constructed are inconclusive. Her father, August Aldridge, built makaha and worked on the fishpond wall when she was 15 or 20 years old (this would be 1937 – 1942). This is much later than Arthur Lyman's recollections (found in the Cultural Impact Assessment, pages 108 and 115) that the existing stone and cement mākāhā was built in 1920 and that the fishpond existed when he was five years old (1917). Sam Ka awaoloa, Minnie Ka awaoloa's nephew is slated to be the foreman in this project to rebuild the fishpond wall.

Art and Rene Kimura

As adjacent landowners we have seen the changes that have occurred to the pond: natural wind, waves, lack of upkeep, changes due to volcanic eruption in the 1960's, and spread of invasive species. Thank you for taking the initiative to restore the pond.

Applicant's Response: Your insights about the fishponds history are interesting and helpful. The area has witnessed many changes over the years with volcanic activity, earthquakes, deterioration of fishpond, and invasive mangrove. Thank you for your support.

Patty and Erik Belcher

I was unaware of the proposed project until the Hawaii Tribune Herald newspaper article. There is not enough time to formulate a response by the January 22 deadline; please give me another 6 to 8 weeks to review and submit input. My property overlooks the fishpond in question. Is the EA available on the Big Island?

OCCL Response: a copy of the CDUA and DEA was placed at the Hilo Library. The project was noticed in the OEQC Environmental Notice on December 23, 2007. A letter was sent to the Belchers noting a copy of the CDUA and DEA could be located at the Hilo District Land Office as well as indicating the matter will come before the BLNR at a time, date and place to be announced.

Tristine Rainer

I am concerned with the safety of the people who use the road adjacent to the landowners property. This road is the only escape for the residents of Alapai Point Road in the event

of a tsunami, hurricane, or flash flood. Alapai Point is a narrow finger of land surrounded by water on three sides.

The contours of the water in of the landowners property have changed; the water from their inlet comes to within five feet of the single exit route. The area closest to the water contains a trough. In the event of a natural disaster the trough would fill and cblock cras and people trying to escape; this could cost many lives.

Applicant Response: Mangrove removal has enabled visibility of the fishpond water because of extensive mangrove removal in the area (at the western end of the fishpond). There is an alternative way off of Alapai Point, that was drivable but has been blocked with boulders. The Kapoho area is an area of high risk from hurricanes, tsunamis; it is an located within the FEMA Special Flood Hazard Area and within the Civil Defense Tsunami Inundation Zone. The Hawaii County Planning Department coastal subsistence in Kapoho addressed shoreline and hazard issues associated with the area. The study concluded planning issues (shoreline certification, and coastal hazard mitigation issues) be given serious consideration during all stages of development in the region...I suggest you have a look at the report and contact the Hawaii County Plannign Department and relay the observations to and concerns about the low laying areas of Alapai Point Road and the hazards it could present to in the event of a tsunami or hurricane.

John Allan

If the proposal will mean the part of Kapoho Bay will no longer be open to the public; I support the denial of the project.

Roger Meeker

Issues regarding impact on Hawaiian green turtles, monk seals, and notice to the community are inadequately addressed. The EA has no support for the comments regarding sea turtle access ingress and egress from the fishpond and potential (negative) impacts.

The turtles have left Champagne Pond due to continued harassment and may be seeking an alternative sanctuary. Much of the fishpond wall at high tide is underwater; it is fair to assume the turtles do not use the mahaka. Will the fishpond wall without the 3 foot wide mahaka gate - once constructed impede access? A qualified marine biologist should be consulted to make a behavioral assessment prior to stating that no impacts to the sea turtles are expected.

We have seen the Hawaiian monk seal in the Kapoho fishpond and surrounding bay waters. Will the same hold true for the monk seals regarding ingress and egress into the fishpond. Again a qualified marine biologist should be present. The notice to the community was inadequate; notice was provided via the Environmental Notice. We found out through a front page news story in the Hawaii Tribune-Herald. We feel no effort was made to inform the immediate community about the proposed project. We do not oppose the project but wish for more time to review and comment on the DEA.

Terrilee Kahealani Kelii

More research and time is needed regarding the proposed project. The green sea turtle and monk sea currently access the fishpond; how will egress and ingress occur after the fishpond wall is reconstructed? You should consult George Balaz regarding the turtle population in the area. A site inspection should be conducted. The pictures are not current. Three Hawaiian Hawks live in the area but have not been seen lately. More research into fishpond area is required. The public (Hawaiin groups, fisherman, local residents) should have more input. The community has not had sufficient time to respond to the project. What actions are being taken to protect the health and safety of people?

Thomas Young

If approved the fishpond, through its design, will rob the near shore environment of a recharge of fish fry that is important to the adjacent aquatic resources. Because the fishpond will be a preserve so it will only benefit the applicant, not the public. How will the fishpond affect employment, economic opportunity, fisheries, education, and the cultural values of the people of Hawaii? The alanui system is still there and needs to be maintained by the state; this needs to be researched and clarified. The project will damage economic and cultural processes if allowed. This area needs consultation with historical records, adjacent land owners, and Native Hawaiians regarding denied access for gathering, cultural and religious rights. I assert the need for a full EIS, along with a request for a Contested Case Hearing. The record is lacking and needs further work to bring all the facts forward.

James Lehner

It is commendable an individual would want to take on such a large project. A designation of sanctuary would prohibit public access and therefore would allow only adjacent property owners to enjoy the fruits of the project. This project would add more restrictions to access the area. A shoreline determination should be done before the project is considered. Hawaiian rights need to be considered as the fishing pond was probably owned by royalty with fishing rights for the people; therefore these rights have been passed onto the state and present day Hawaiians. A full EA should be done. The case should be contested and the permit be denied at this time.

Richard Shea

I object to the project. The restored fishpond wall and designated ocean sanctuary will exclude the public from a significant portion of Kapoho Bay which is clearly makai of the shoreline. Waters to be walled off are within easy reach via boat, board, or swimming. The neighborhood do their best to exclude foot and auto traffic from the outside; they should not be able to exclude the public via the water. The millionaire developers interest in historical/cultural restoration is not credible. The State of Hawaii should not compound the exclusion of the public (which has been ongoing in Kapoho Beach Lots) with its traffic gate and lack of aloha to its residents.

Dale Schwarz

What will happen to the turtle's access and egress once the fishpond walls have been completed? Will they be contained in the fishpond? How will the proposed wall affect

water quality in the lagoon? Is the submerged land really private property and not state-owned land? My understanding is the ocean belongs to the State of Hawaii; please give clarification. I believe the ocean should be left as is, in the state it has been for many, many years, with public access continuing to be available from the ocean.

Due to the amount of issues and concerns staff has compiled the summary of responses from the consultant:

I am sorry you do not support this project. This project proposes to restore a traditional Hawaiian fishpond and make it a marine sanctuary (a no fishing zone) to help replenish the dwindling fish stocks of Kapoho Bay proper and the reefs beyond. This means limiting access to the fishpond waters to enable the marine life to flourish. We feel restoring this historic fishpond and allow it to serve as a marine sanctuary is the right thing to do to help the environment and preserve, enhance, and perpetuate Hawaiian ways.

Private Property

Traditional Hawaiian fishponds are unique that they are located in ocean waters but the fishpond wall and all the submerged lands enclosing them are private property. The practice comes from ancient tradition and custom whereby exclusive control of the fishpond waters has always been required – and this written into kingdom law (which continues to this day) to insure a productive fishpond. The fishpond wall is clearly visible during all but the highest tides. The fishpond and its waters have never been considered public property. Hawaiian law has always treated fishponds and private property (Boone v. United States 1989). Before the passage of the Organic Act in 1900 most of the open ocean fisheries that surround the Hawaiian Islands were private, for the exclusive use of the community [tenants] who lived in that area (this was known as Konoiki Fishing Rights). Restrictive use of the ocean has a longer, more established history in Hawai'i than unrestricted open access. The State owns all submerged lands in Hawaii and the only exception to this are private parties who own fishponds that lie below the high water line, like Kapoho Fishpond.

The fishpond wall is clearly visible during all but the highest tides. The fishpond has never been considered public property. The Draft EA: TMK Map (page 15), Zoning map (page 17), Land Survey Map (page 38) indicates the parcel boundaries include the fishpond wall and all the submerged lands within it. The applicant has clear title to the fishpond, has title insurance, and pays property taxes on it.

Adverse Possession

Adverse Possession can only occur if "open, notorious, continuous and exclusive possession has occurred for at least 20 years (Sister Albertina v. Kapiolani Estate, 14 Haw. 321 (1902))." Seasonal visits would not qualify as continuous and exclusive possession of the property. The property is developed with a home on the property.

Public Access

The landowner is open to hosting visitors, particularly school classes, on a limited basis. Of primary concern is that fact that this is the applicant's primary residence is their safety and security. Currently, the public visits the fishpond. Sometimes large groups of 50 or 20 come and stay for a few days. People ask someone else, Uncle Sam, to use the property. The pavilion has been a place for a women's get together on a weekly basis. Friends and neighbors come over to swim on a regular basis without asking. The turtle research group is here every year.

Being on a fishpond wall was always kapu (prohibited) and people understood the concept. One has to assume most people today will not know about these restrictions; or know that in fact the wall is private property. Out of respect to the fishpond wall and people's health and safety, signs will be placed on the wall to notify people that the wall is private property and to keep off of it. A visit to fishponds on Oahu, Maui and Moloka'i all testify to the fact that placing "keep off" signs along fishpond walls is a continued and prevalent practice to this day. Additional signs maybe placed to inform the public how they can legally visit the fishpond.

Marine Mammal and Aquatic Resource Access

The makaha will not block access to marine mammals, and fish. An important component of a functioning fishpond is the utilization of tidal shifts and the water currents they create moving through the fishpond makaha and within the fishpond. During higher tides, portions of the fishpond wall are underwater providing access for marine animals; access over the wall is periodic and happenstance. With an intact wall and makaha these water currents will be stronger than today. As marine plants and animals are naturally attracted to ocean currents, seawater flowing into the pond will bring plants, animals, mammals, etc. through the makaha by the tides. Out-going waters will contain a rich combination of microorganisms that will serve as food for the reefs, move grown fish out to the reefs and ocean to spawn, and other marine animals exit the fishpond.

The power of the daily tides moving through the improved mākāhā and rebuilt wall, and deeping fishpond basin with the repositioning of the rocks will also have a favorable impact on maintaining water currents within the fishpond. Trade winds will continue to exert a significant influence on water circulation and water quality, as will the basal ground water springs in the back of the fishpond. The on-going mangrove removal along the shoreline and within the fishpond basin is allowing more of the water to interact with the currents and winds and sunlight, thereby increasing the water circulation patterns and water oxygenation.

George Balaz

Dr. George Balaz was contacted and asked to comment on the DEA. However, he is a Federal NOAA employee and that agency has discrete areas of responsibility concerning the review and comment of EA s. Comments and evaluations come under another office and until that office (The Pacific Regional Office) requests his input, he is prevented from making any comments or opinions about the Daft EA.

Viability of Proposed Project

The fishpond is a site where fish fry recharge and help replenish fisheries stocks. Juveniles of several species (ama ama, awa, aholehole) migrate into the shallow inshore pond environment where fresh or brackish water inflow is concentrated. Fresh water contains dissolved nutrient such as nitrogen and phosphorus, which feeds marine plant growth; supporting a diverse food chain including microorganisms, invertebrates, fish and turtles. The shallow calm waters of enclosed ponds also provide enhanced levels of protection from large predatory fish such as kaku (barracuda), ulua (jacks) and mano (sharks). When juvenile fish have grown to young adult size, most instinctively leave the protection of shallow fishpond environs to feed on reef or deep-water foods and to reproduce. Some of the fish fry ultimately created by those breeding age adults will come inshore to seek shelter in Kapoho bay and others will repopulate other sections of island shoreline.

Mangrove Removal

Mangroves in Hawaii have substantially altered coastal ecosystems by changing seafloor chemistry, sediment structure, and modifying the animal communities that live there. Mangrove is not native to Hawai'i, it has no natural predators to control its growth. Thus mangrove's smothering root systems allow it to out-compete all native Hawaiian plants; it fills in coastal regions with sediment, destroying habitats for native plants and animals; the sediment that mangrove accumulates is anoxic (lacks oxygen) and cannot support life. Mangrove is being cleared from the shoreline and basin, thus improving water quality. The springs at the back of the pond provide a steady supply of fresh water. Because removal of the alien invasive mangrove is ongoing at the project site any pictures would look dated. Since removing the mangrove, there has been a noticeable resurgence in marine life, including turtles. Old pahoehoe shoreline creates an ideal haul-out and sun basking substrate for the turtles.

Community Input

The proposed project is undergoing Chapter 343, Hawai'i Revised Statutes, to provide to the public input into the planning process. The public had 30 days from the publication date to comment on the project. Comments received have been taken into consideration. The applicant and his wife are active on the Kapoho Bay Community Association. The wall repair was discussed frequently on an informal basis. Accordingly no one seemed interested in making the project an issue.

Hawaiian Rights

This fishpond is estimated to be about 100 years old; it is not an ancient fishpond built by Ali i, royalty. However, this is still a significant historic and cultural property and Hawaiian rights have been considered and addressed in this project proposal. The project embodies the notion of not only protecting native Hawaiian rights, but also enhancing them. The project is about malama aina, the stewardship and protection of a nearly lost cultural treasure. Rebuilding and maintaining the fishpond will revive many cultural practices nearly lost, particularly in this, and passing these practices on to the next generation.

The proposal will only protect, enhance and develop culturally significant practices and traditional resources in the area. The project proposal will revive a fishpond that was previously derelict and extensively inundated with mangrove. The work is being undertaken by a group consisting of mostly Native Hawaiians. The restored fishpond will be managed as a fully functioning historic fishpond and it will again be a productive site for the propagation and grow-out of traditional species. Because the fishpond will be a marine reserve, no large-scale fish harvesting allowed, the fishpond will be in effect a nursery and will help restock the larger waters of Kapoho Bay—thus enhancing traditional fishing and gathering practices in the waters adjacent to the fishpond.

The applicant has spent a substantial amount of time, money and energy rehabilitating this fishpond from an abysmal state. He is committed to rebuilding the fishpond wall and making the site a thriving fishpond once again and involving members of community to make this happen. This project is about malama aina, the stewardship and protection of a nearly lost cultural treasure. Rebuilding and maintaining the fishpond will revive many cultural practices nearly lost, particularly in this region, and passing these practices on to the next generation.

*The OCCL notes additional comment letters from the community and Historic Preservation Division were received after comment deadline **Exhibit 6**.*

Analysis:

Following review and acceptance for processing, the applicant was notified, by letter dated December 11, 2007 that:

1. The proposed use is an identified use within the Protective subzone of the Conservation District according the Hawaii Administrative Rules (HAR), 13-5-22, P-2, FISHPONDS, (D-1), restoration or repair of a fishpond under an approved management plan; where restoration is the act or process of returning the property to a state of utility through repair or alteration which makes possible an efficient contemporary use, such as aquaculture;" please be advised however that this finding does not constitute approval of the proposal;
2. A public hearing pursuant to HAR 13-5-40 will not be required;
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment for the project has been submitted to the Office of Environmental Quality Control (OEQC), and will be published in the November 23, 2007 edition of OEQC's Environmental Notice.

The OCCL notes the proposed project's DEA was published in the December 23, 2007 Environmental Notice. The Final Environmental Assessment (FEA) was submitted with a Finding of No Significant Impact (FONSI) for OEQC's April 8, 2008 Environmental Notice.

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

Staff is of the opinion that the proposed action will not increase structural density, as there is already an existing fishpond wall. The action will reconstruct the fishpond wall in its original condition. The action is consistent with the purpose of the Conservation District. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area.

Staff is of the opinion that the proposed land use is consistent with the Resource subzone's identified land use(s).

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Staff notes that the proposed project is consistent with Chapter 205A.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff is of the opinion that impacts have been adequately mitigated; therefore the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region. If impacts are detected after construction, the applicant notes they will address them.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the fishpond fits into the locality and surrounding area, with appropriate mitigation measures and without significant or deleterious effects to the locality, surrounding area and parcels, provided that all mitigation measures are implemented and the applicants take responsibility for any deleterious effects on adjacent properties.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the fishpond wall will be reconstructed as close to its original footprint as possible. The applicant has taken the appropriate steps to mitigate any potential impacts and to maximize and enhance the natural beauty and open space characteristics of the subject parcel.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

The proposed use is an identified land use within the Conservation District, according Hawaii Administrative Rules (HAR), 13-5-22, P-2, FISHPONDS, (D-1), restoration or repair of a fishpond under an approved management plan; where restoration is the act or process of returning the property to a state of utility through repair or alteration which makes possible an efficient contemporary use, such as aquaculture.

Staff notes that mangrove removal will increase the usable area of fishpond waters as a suitable habitat for wading birds, will allow native plant species to repopulate, and create a permanent resting and feeding habitat. Some of the fishpond's walls will be repositioned thus the topography of the fishponds basin will increase to 4 feet in areas mauka of the wall. Water quality impacts associated with the proposed action will be short term and confined to the proposed area. Reconstruction will occur during low or minus tides to access the rock wall and to ensure water quality impacts will be

minimized. Water current should be improved with flow, exchange, and circulation of the fishpond water.

Staff is of the opinion that the proposed project does not conflict with the objectives of the subzone. Staff notes the applicant will preserve the natural beauty and open space characteristics of the area. Staff is of the opinion that the proposed project will not result in substantial adverse impacts to natural resources.

Staff notes a site inspection was conducted of the proposed project on November 8, 2007. At that time there were no current recreational activities ongoing. However community comments indicate there maybe ongoing swimming, snorkeling, etc. activities within the site.

Staff notes concerns raised in comment letters revolve around: 1) marine animals (green sea turtle, fish, monk seal) egress and ingress from the fishpond; 2) lack of community input; 3) submerged land really private property versus state-owned land; 4) consultation with marine experts who could provide information proposed project; 5) lack of access for the public into the fishpond.

Staff notes the CDUA and DEA was submitted to the Division of Aquatic Resources (DAR), and U.S. Fish and Wildlife Service yet no responses addressed concerns regarding the proposed project and egress and ingress of the marine animals from the fishpond.

Staff notes the CDUA and DEA were noticed in the OEQC Environmental Notice regarding the proposed project, put into the Hilo Library, and available at the counter at the Hawaii Land Division Office. The landowner and consultant notes they did contact the community regarding the proposed project, as well conducted a follow up consultation with the community on February 8, 2008 at the fishpond.

Staff notes the landowner's metes and bounds of his TMK clearly extend out into the water. The landowner has clear title to the fishpond which was verified by the Land Division. The applicant notes that traditional Hawaiian fishponds are unique the area located in ocean waters but the fishpond wall and all the submerged lands enclosing them are private property. The practice comes from ancient tradition and custom whereby exclusive control of the fishpond waters has always been required -- and this written into kingdom law (which continues to this day) to insure a productive fishpond. The fishpond wall is clearly visible during all but the highest tides. According to the applicant, the fishpond and its waters have never been considered public property, and Hawaiian law has always treated fishponds and private property (Boone v. United States 1989).

However staff disagrees and notes that while the landowner owns the submerged land and fishpond rocks that construct the wall, the state appears to own the water, water column, and marine animals, corrals, or other aquatic fish within the fishpond.

Access via water is something the landowner does not have control over. *As the applicant stated, the fishpond is estimated to be about 100 years old and it is not an ancient fishpond built by Alii.*

As part of the approval of the CDUA HA-3447 staff recommends to the Board of Land and Natural Resources that the makaha will always remain ungated, to allow for ingress and egress of marine mammals, fish, and the general public. This means that should someone swim or transverse through the water column, through the makaha into the fishpond they will always have access.

Staff notes that DAR is concerned about two invasive macro algae that are present at the fishpond; more quantitative surveys should be conducted inside and outside the fishpond to gather data. Staff recommends to the Board of Land and Natural Resources the applicants consult with the DAR, Hawaii Branch Office regarding the appropriate way to effectively use Best Management Practices to stop and/or minimize the spread of the algae prior to construction of the project.

Staff notes if the fishpond's walls will be being repositioned mauka of the wall, outside of the landowner's metes and bounds, a Lease with the Hawaii District Land Office will need to be submitted and processed.

Staff recommends to the Board of Land and Natural Resources that the following conditions should be attached to the CDUA permit: The applicant shall submit annual reports, from the date of the Board of Land and Natural Resources approval to the Chairperson (or the OCCL), on the status of the project. These reports shall contain the following monitoring indices: water quality data (tide, wind direction, weather conditions, salinity, dissolved oxygen, temperature, turbidity) before, during, and after restoration. Data shall also include profiles and photo documentation before, during, and after restoration.

Staff therefore recommends;

RECOMMENDATION:

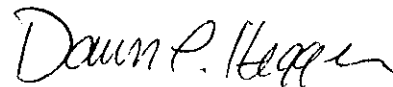
Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application to reconstruct Kapoho Fishpond, subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 4) Staff recommends to the Board of Land and Natural Resources the applicants consult with the DAR, Hawaii Branch Office regarding the appropriate way to effectively use Best Management Practices to stop and/or minimize the spread of the algae.
- 5) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 6) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 7) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 8) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 9) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 10) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 11) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;

- 12) That the applicant submits annual reports from the date of the Board of Land and Natural Resources approval to the Chairperson (or the OCCL) on the status of the project. These reports shall contain: water quality data (tide, wind direction, weather conditions, salinity, dissolved oxygen, temperature, turbidity) before, during, and after restoration. Data shall also include beach profiles and photo documentation before, during, and after restoration, and a general discussion of the fishpond's impact on the existing environment;
- 13) The applicant shall notify and receive prior approval from the OCCL, if additional materials (rocks) are to be imported (to review the source location of the materials);
- 14) The applicant shall take responsibility for any deleterious effects resulting from the fishpond restoration on adjacent properties;
- 15) That as part of the approval of CDUA HA-3447, the applicant will keep the makaha ungated, to allow for ingress and egress of marine mammals, fish, and the general public;
- 16) That if any portion of the fishpond wall is rebuild on state-owned lands, the applicant will first obtain a land disposition from the State of Hawaii;
- 17) Other terms and conditions as may be prescribed by the Chairperson; and
- 18) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

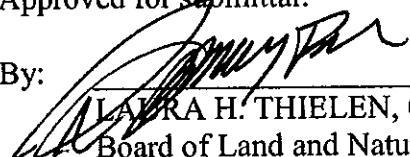
Respectfully submitted,



Dawn T. Hegger
Senior Staff Planner

Approved for submittal:

By:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

03/08/2004

INSTR-DESC: WARRANTY DEED

INSTR_NO:04-047368

TRANS NO: 2340946
INSTR-DATE: 03/01/2004
REC-DATE: 03/08/2004

AMOUNT:\$900,000

AREA:16.9130 ACRES

STATE-CONV-TAX: \$ 900

FROM: HARRY C S PARK & WF LUCILLE S PARK

TO: BARSELL PECOS LLC, A NEVADA LTD LIABILITY COMPANY

16.913 AC DES POR RP 4497 LP 8177 LCAW 8559:5

TOG/ESMTS FOR ROAD & UTILITY PURP

GROUP#	NAME	F	TC	%-OWNER	TITLE-DESC
2 0011	BARSELL PECOS LLC				

FOR ASSESSMENT YEAR 2007

PITT 8 LAND VALUE: \$124,300
BUILDING VALUE: \$2,600

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

FOR ASSESSMENT YEAR 2006

PITT 8 LAND VALUE: \$1,242,800
BUILDING VALUE: \$2,400

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

FOR ASSESSMENT YEAR 2005

PITT 8 LAND VALUE: \$745,700
BUILDING VALUE: \$2,200

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

SITE ADDRESS: 14-4934 LAIMANA ROAD
Laepaoo-Puua

MAILING ADDRESS: BARSELL PECOS LLC
C/O BARSELL, JOHN/SANDRA
RR2 BOX 3933
PAHOA HI 96778 0000

08/23/1999

INSTR-DESC: WARRANTY DEED

INSTR_NO:9900135325

TRANS NO: 21494
INSTR-DATE: 08/11/1999
REC-DATE: 08/23/1999

AMOUNT:\$450,000

AREA:16.9130 ACRES

STATE-CONV-TAX: \$ 450.00

FROM: SEIYUKAI CORPORATION, A HI CORP

TO: HARRY C S PARK & WF LUCILLE S PARK - T/E

16.913 AC DES POR RP 4497 & LP 8177 & LCAW 8559:5

TOG/ESMTS FOR RD & UTILITY PURPOSES

GROUP#	NAME	F	TC	%-OWNER	TITLE-DESC
2 0011	PARK,HARRY C S	H	3TE		
2 0012	PARK,LUCILLE S	S			

FOR ASSESSMENT YEAR 2004

PITT 8 LAND VALUE: \$435,000
BUILDING VALUE: \$2,000

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

FOR ASSESSMENT YEAR 2003

PITT 8 LAND VALUE: \$435,000
BUILDING VALUE: \$2,000

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

FOR ASSESSMENT YEAR 2002

PITT 8 LAND VALUE: \$435,000
BUILDING VALUE: \$2,000

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

FOR ASSESSMENT YEAR 2001

PITT 8 LAND VALUE: \$435,000
BUILDING VALUE: \$2,000

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

FOR ASSESSMENT YEAR 2000

PITT 8 LAND VALUE: \$148,800
BUILDING VALUE: \$2,200

EXEMPT LAND VALUE: \$0
EXEMPT BUILDING VALUE: \$0

MAILING ADDRESS: PARK,HARRY C S

EXHIBIT 1

PRELIMINARY REPORT
(No Liability Hereunder)

This report (and any revisions thereto) is issued solely for the convenience of the titleholder, the titleholder's agent, counsel, purchaser or mortgagee, or the person ordering it for the purpose of facilitating the issuance of a policy of title insurance by Title Guaranty of Hawaii and no liability will arise under this report.

SCHEDULE A

Title Guaranty of Hawaii, Incorporated, hereby reports that, subject to those matters set forth in Schedule "B" hereof, the title to the estate or interest to the land described in Schedule "C" hereof is vested in:

HARRY C.S. PARK and
LUCILLE S. PARK,
husband and wife,
as Tenants by the Entirety,
as Fee Owner

This report is dated as of January 12, 2004 at 8:00 a.m.

Inquiries concerning this report
should be directed to
VIRGINIA GARCIA.
Email vgarcia@tghawaii.com.
Fax (808) 521-0221.
Telephone (808) 533-5858.
Refer to Order No. 200401616.

Inquiries concerning Escrow
should be directed to
DEBRA N TOMONO.
Email dtomono@tghawaii.com.
Fax (808) 969-6982.
Telephone (808) 933-2375.
Escrow No. A43020060.

**SCHEDULE B
EXCEPTIONS**

1. Real Property Taxes - Information pending.

Tax Key: (3) 1-4-002-036 Area Assessed: 736,730 sq. ft.

Land Classification: UNIMPROVED RESIDENTIAL

Street Address: 14-5091 ALAPAI POINT ROAD, PAHOA, HAWAII 96778

2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : KAPOHO BEACH COMMUNITY ASSOCIATION BY-LAWS-AUGUST
2001

DATED : September 5, 2001
RECORDED : Document No. 2001-141597

END OF SCHEDULE B

SCHEDULE C

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 4497 and Land Patent Number 8177, Land Commission Award Number 8559, Apana 5 to C. Kanaina) situate, lying and being in the District of Puna, Island and County of Hawaii, State of Hawaii, and thus bounded and described:

Beginning at a point at the north corner of this parcel of land and at the southeasterly side of Lot 130 (File Plan 498) 40-foot road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAPOHO" being 958.57 feet north and 6338.64 feet east and running by azimuths measured clockwise from true South:

- | | | | | |
|----|------|-----|--------|--|
| 1. | 326° | 18' | 130.35 | feet (revised) along Lot 1 to a pipe (found); |
| 2. | 332° | 25' | 56.07 | feet (revised) along Lot 1 to a spike (found) at highwater mark at seashore; |

Thence following along the seashore in all its windings at highwater mark, the direct azimuths and distances between points at highwater mark for the next seven (7) courses being:

- | | | | | | |
|----|------|-----|-----|--------|-----------------------------------|
| 3. | 60° | 46' | 45" | 88.17 | feet to a nail; |
| 4. | 56° | 54' | | 79.81 | feet to a nail; |
| 5. | 296° | 55' | | 117.01 | feet to a nail; |
| 6. | 209° | 08' | | 105.80 | feet to a nail; |
| 7. | 316° | 06' | | 36.56 | feet to a nail; |
| 8. | 29° | 39' | | 82.32 | feet to a nail; |
| 9. | 286° | 43' | | 164.79 | feet to a nail on top of seawall; |

SCHEDULE C CONTINUED

Thence following along the top of seawall, the direct azimuths and distances between points for the next eleven (11) courses being:

10.	289°	18'		110.04	feet to a nail;
11.	322°	15'	30"	33.56	feet to a nail;
12.	305°	25'		59.83	feet to a nail;
13.	314°	52'		48.57	feet to a nail;
14.	324°	42'		71.15	feet to a nail;
15.	335°	42'	30"	60.55	feet;
16.	343°	13'		48.03	feet;
17.	350°	10'	30"	57.04	feet;
18.	21°	33'		96.23	feet;
19.	43°	41'		25.62	feet;
20.	65°	02'	30"	36.08	feet to a nail;

Thence following along the seashore in all its windings at highwater mark, the direct azimuths and distances between points at highwater mark for the next nine (9) courses being:

21.	340°	51'		66.42	feet to a nail;
22.	59°	28'		48.64	feet to a nail;
23.	197°	54'	30"	64.54	feet to a nail;
24.	84°	15'		140.29	feet to a nail;
25.	9°	09'		143.53	feet to a nail;
26.	318°	15'		83.33	feet to a nail;

SCHEDULE C CONTINUED

27.	33°	45'	30"	76.15	feet to a nail;
28.	294°	07'	30"	23.47	feet to a nail;
29.	223°	16'	30"	86.50	feet;
30.	27°	40'		272.58	feet along Kapoho Beach Lots Extension II (Alapai Point Section);
31.	316°	41'		49.59	feet along Kapoho Beach Lots Extension II (Alapai Point Section) to a point at the northwesterly side of Lot 25 (File Plan 579), 40-foot road;
32.	62°	55'		203.61	feet along the northwesterly side of Lot 25 (File Plan 579), 40-foot road;

Thence along Lot 25 (File Plan 579), 40-foot road along a curve to the right having a radius of 21.13 feet, the chord azimuth and distance being:

33.	112°	04'		31.97	feet;
34.	161°	13'		182.69	feet along the easterly side of Lot 25 (File Plan 579), 40-foot road;
35.	172°	31'		264.47	feet along the easterly side of Lot 25 (File Plan 579), 40-foot road;

Thence along the northeasterly side of Lot 25 (File Plan 579) 40-foot road along a curve to the left having a radius of 92.00 feet, the chord azimuth and distance being:

36.	137°	20'		106.02	feet;
-----	------	-----	--	--------	-------

SCHEDULE C CONTINUED

37. 102° 09' 167.38 feet along the southerly side of Lot 25 (File Plan 579), 40-foot road;

Thence along the northeasterly side of Lot 25 (File Plan 579) 40-foot road along a curve to the right having a radius of 90.00 feet, the chord azimuth and distance being:

38. 131° 13' 30" 87.47 feet;

39. 160° 18' 221.20 feet along the easterly side of Lot 25 (File Plan 579), 40-foot road;

40. 164° 52' 144.58 feet along the easterly side of Lot 25 (File Plan 579), 40-foot road;

41. 154° 18' 197.52 feet along the easterly side of Lot 25 (File Plan 579), 40-foot road;

42. 151° 08' 119.73 feet along the easterly side of Lot 25 (File Plan 579), 40-foot road;

Thence along Lot 25 (File Plan 579), 40-foot road along a curve to the right having a radius of 20.00 feet, the chord azimuth and distance being:

43. 218° 31' 15" 36.92 feet to a point at the southerly side of Lot 130 (File Plan 498), 40-foot road;

44. 285° 54' 30" 212.16 feet along the southerly side of Lot 130 (File Plan 498), 40-foot road;

SCHEDULE C CONTINUED

45. 235° 43' 400.94 feet (revised) along the southeasterly side of Lot 130 (File Plan 498), 40-foot road to the point of beginning and containing an area of 16.913 acres, more or less.

Together with easements for road and utility purposes, to be used in common with others, over and across Lot 130 (File Plan 498), 40-foot road and Lot 25 (File Plan 579), 40-foot road.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : SEIYUKAI CORPORATION, a Hawaii corporation

GRANTEE : HARRY C.S. PARK and LUCILLE S. PARK, husband and wife, as Tenants by the Entirety

DATED : August 11, 1999

RECORDED : Document No. 99-135325

END OF SCHEDULE C

GENERAL NOTES

1. There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that said covenant (i) is exempt under Chapter 42, Section 3607 of the United States Code or (ii) relates to handicap but does not discriminate against handicapped persons.

BUYER(S) LIEN INFORMATION

1. Title Guaranty of Hawaii, Incorporated, finds no liens docketed against JOHN E. BARSELL and SANDRA K. BARSELL, the proposed purchaser(s).

GUIDELINES FOR THE ISSUANCE OF INSURANCE

- A. Taxes shown in Schedule B are as of the date such information is available from the taxing authority. Evidence of payment of all taxes and assessments subsequent to such date must be provided prior to recordation.
- B. Evidence of authority regarding the execution of all documents pertaining to the transaction is required prior to recordation. This includes corporate resolutions, copies of partnership agreements, powers of attorney and trust instruments.
- C. If an entity (corporation, partnership, limited liability company, etc.) is not registered in Hawaii, evidence of its formation and existence under the laws where such entity is formed must be presented prior to recordation.
- D. If the transaction involves a construction loan, the following is required:
 - (1) a letter confirming that there is no construction prior to recordation; or
 - (2) if there is such construction, appropriate indemnity agreements, financial statements and other relevant information from the owner, developer, general contractor and major sub-contractors must be submitted to the Title Company for approval at least one week prior to the anticipated date of recordation.

Forms are available upon request from Title Guaranty of Hawaii.

- E. Chapter 669, Hawaii Revised Statutes, sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of real property. If your survey map shows a position discrepancy that falls within the tolerances of Chapter 669, call your title officer as affirmative coverage may be available to insured lenders.
- F. The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in connection with this transaction.
- G. If a policy of title insurance is issued, it will exclude from coverage all matters set forth in Schedule B of this report and in the printed Exclusions from Coverage contained in an ALTA policy or in the Hawaii Standard Owner's Policy, as applicable. Different forms may have different exclusions and should be reviewed. Copies of the policy forms are available upon request from Title Guaranty of Hawaii or on our website at www.tghawaii.com.

DATE PRINTED: 1/13/2004

STATEMENT OF ASSESSED VALUES AND REAL PROPERTY TAXES DUE

NAME OF OWNER: PARK, HARRY C S/LUCILLE S
LEASED TO :

TAX MAP KEY

DIVISION ZONE SECTION PLAT PARCEL HPR NO.
(3) 1 4 002 036 0000

CLASS: 8 AREA ASSESSED: 736,730 SF

ASSESSED VALUES FOR CURRENT YEAR TAXES: 2003

This certifies that the records of this division show the assessed values and taxes on the property designated by Tax Key shown above are as follows:

BUILDING	\$	2,000
EXEMPTION	\$	0
NET VALUE	\$	2,000
LAND	\$	435,000
EXEMPTION	\$	0
NET VALUE	\$	435,000
TOTAL NET VALUE	\$	437,000

Installment (1 - due 8/20; 2 - due 2/20)

Tax Year	Installment	Tax Amount	Penalty Amount	Interest Amount	Other Amount	Total Amount	
2003	2	2,152.22				2,152.22	PENDING
2003	1	2,152.23	215.22	47.35		2,414.80	DELINQUENT
2002	2	2,152.22				2,152.22	PAID
2002	1	2,152.23				2,152.23	PAID
2001	2	2,183.50				2,183.50	PAID
2001	1	2,183.50				2,183.50	PAID
2000	2	753.35				753.35	PAID
2000	1	753.35				753.35	PAID
1999	2	753.77				753.77	PAID
1999	1	753.78				753.78	PAID

Total Amount Due: 4,567.02

Penalty and Interest Computed to: 9/30/2003

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE _____ TIME _____

Doc 2007-161626
SEP 11, 2007 08:02 AM

LAND COURT SYSTEM

REGULAR SYSTEM

Return by: MAIL (X) PICKUP () TO:

THIS DOCUMENT CONTAINS 9 PAGES

TITLE OF DOCUMENT:

QUITCLAIM DEED

PARTIES TO DOCUMENT:

GRANTOR: BARSELL PECOS, LLC, a Nevada limited liability company, whose mailing address is RR2 Box 3933, Pahoa, Hawaii 96778

GRANTEE: JOHN E. BARSELL, JR. and SANDRA K. BARSELL, husband and wife, whose mailing address is RR2 Box 3933, Pahoa, Hawaii 96778

TAX MAP KEY (3) 1-4-002:036

PKK/MISCCONV/2007-43.DED/8-10-07

QUITCLAIM DEED

BARSELL PECOS, LLC, a Nevada limited liability company, whose mailing address is **RR2 Box 3933, Pahoa, Hawaii 96778**, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to the Grantor paid by **JOHN E. BARSELL, JR. and SANDRA K. BARSELL, husband and wife**, whose mailing address is **RR2 Box 3933, Pahoa, Hawaii 96778**, hereinafter called the "Grantee", the receipt of which is acknowledged, remises, releases and quitclaims unto the Grantee, the property described in attached Exhibit "A", hereinafter called the "property".

AND the reversions, remainders, rents, issues and profits and all of the estate, right, title and interest of the Grantor, both at law and in equity, in and to the property.

TO HAVE AND TO HOLD the property, including the improvements thereon, and all rights, easements, privileges and appurtenances belonging or appertaining to or held and enjoyed with the property, unto the Grantee, as **Tenants by the Entirety**, their assigns and the survivor of them, and the heirs, personal representatives and assigns of the survivor of them, in fee simple forever.

This instrument and the covenants of the Grantor shall be binding upon the Grantor and inure to the benefit of the Grantee. The terms "Grantor" and "Grantee" as and when used herein, or any pronouns used in place thereof, shall mean and include the singular or plural number, individuals, partnerships, trustees and corporations, and each of their respective heirs, personal representatives, successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed

This instrument may be executed on facsimile copies, and in counterparts, each of which shall be deemed an original. When all counterparts have been executed and assembled, all of said counterparts shall constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or to the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

6 Sept, 2007.

By John E. Barsell, Jr.
JOHN E. BARSELL, JR.
Its Manager

GRANTOR

BY [Signature]
8-10-07

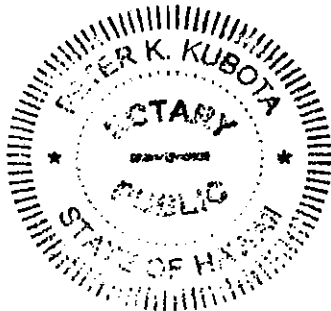
STATE OF HAWAII


)
) ss.

COUNTY OF HAWAII

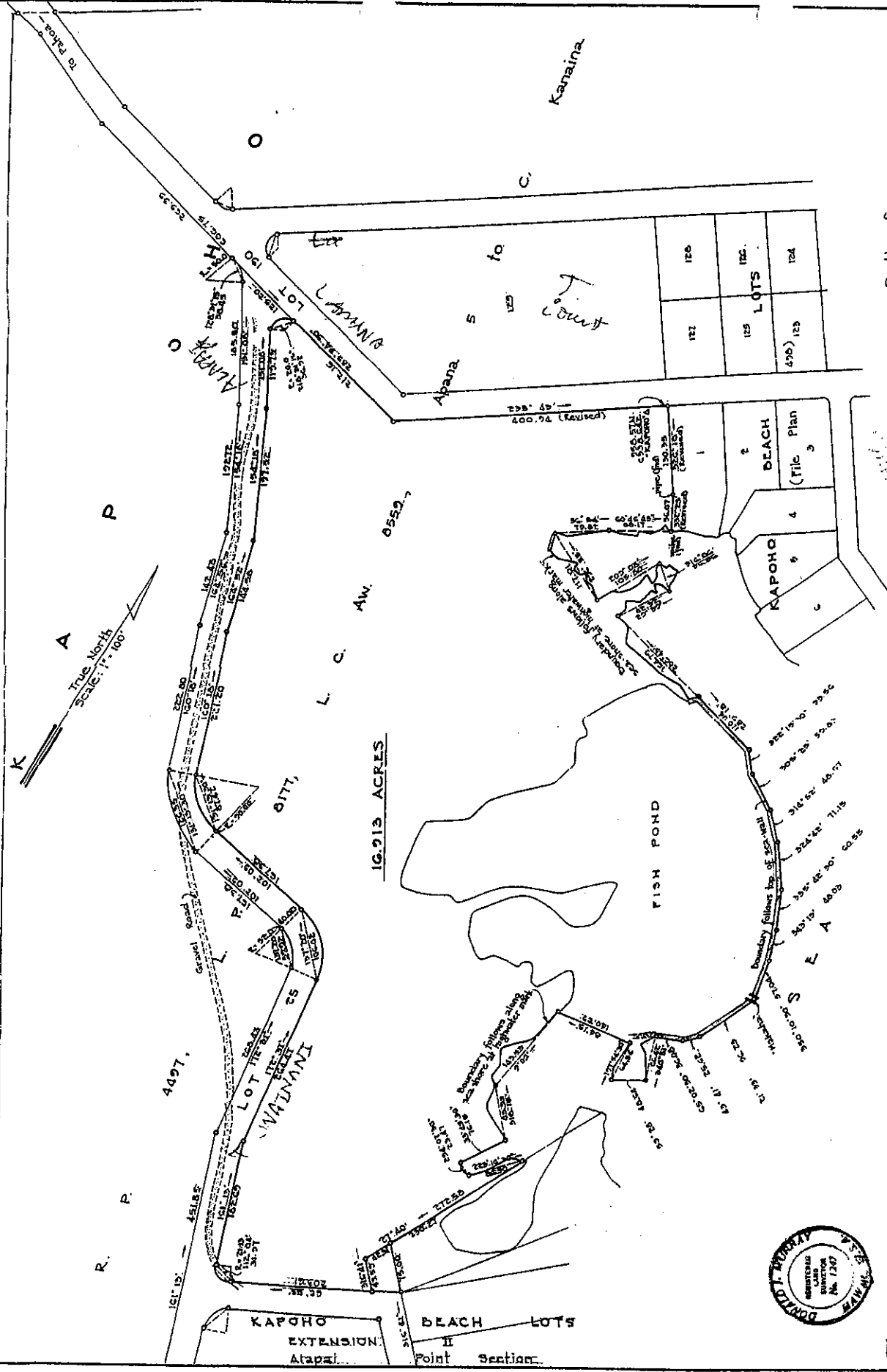
)

On this 6th day of September, 2007, before me personally appeared **JOHN E. BARSELL, JR.**, to me personally known, who, being by me duly sworn, did say that said person is the Manager of **BARSELL PECOS, LLC**, a Nevada limited liability company, that the foregoing instrument was signed in the name of and on behalf of said limited liability company, and said person acknowledged that the foregoing instrument was executed as the free act and deed of said person and as the free act and deed of said limited liability company.




Name: PETER K. KUBOTA
Notary Public, State of Hawaii

My commission expires: 4/17/2009

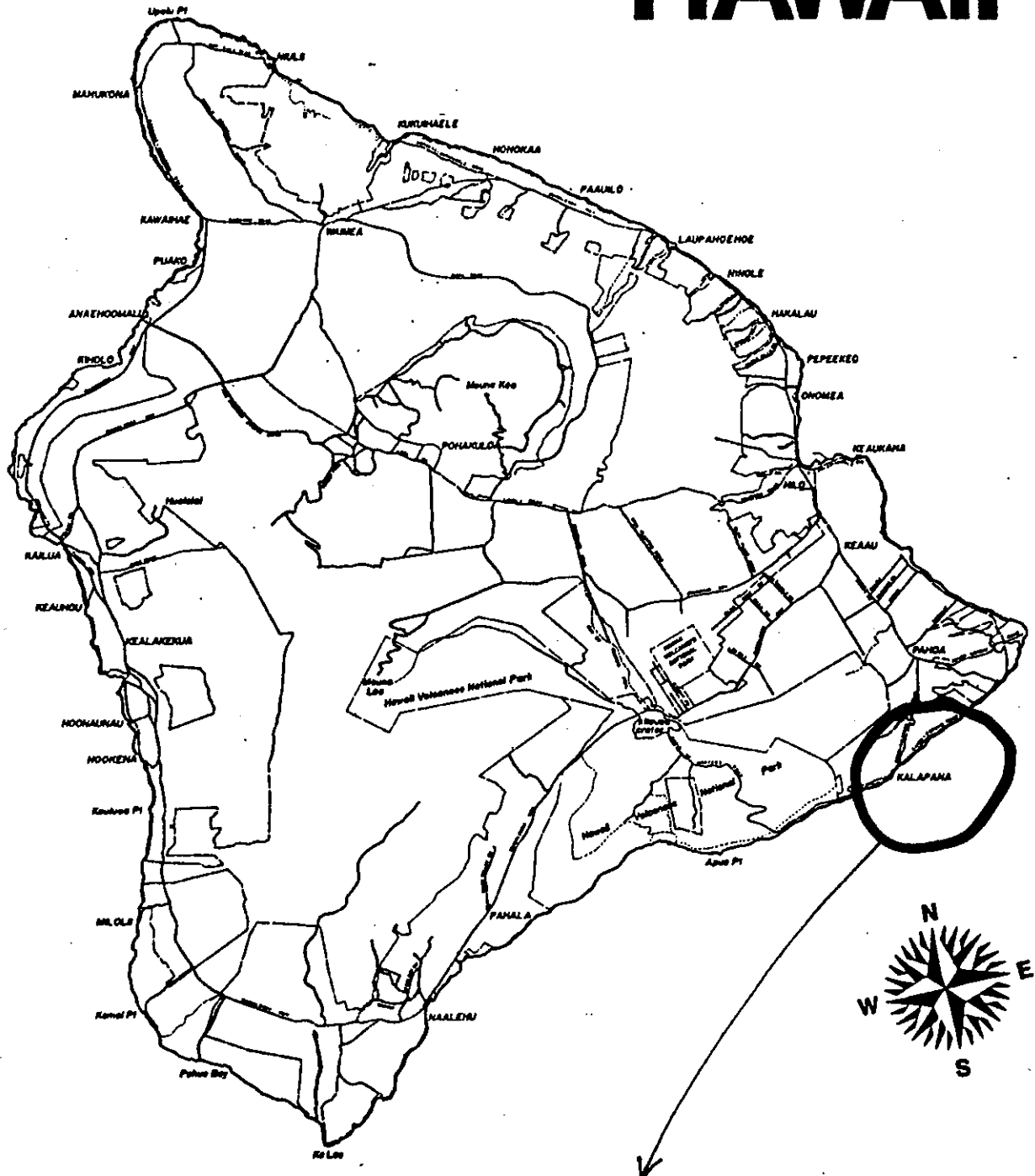


Portion of
 R.P. 4497, L.P. 8177, L.C. AW. 8559, AP. 5 to C. Kanaina
 Kapoho, Puna, Hawaii
 Survey and plan by Murray, Smith & Associates, Ltd.
 P.O. Box 663
 Hilo, Hawaii

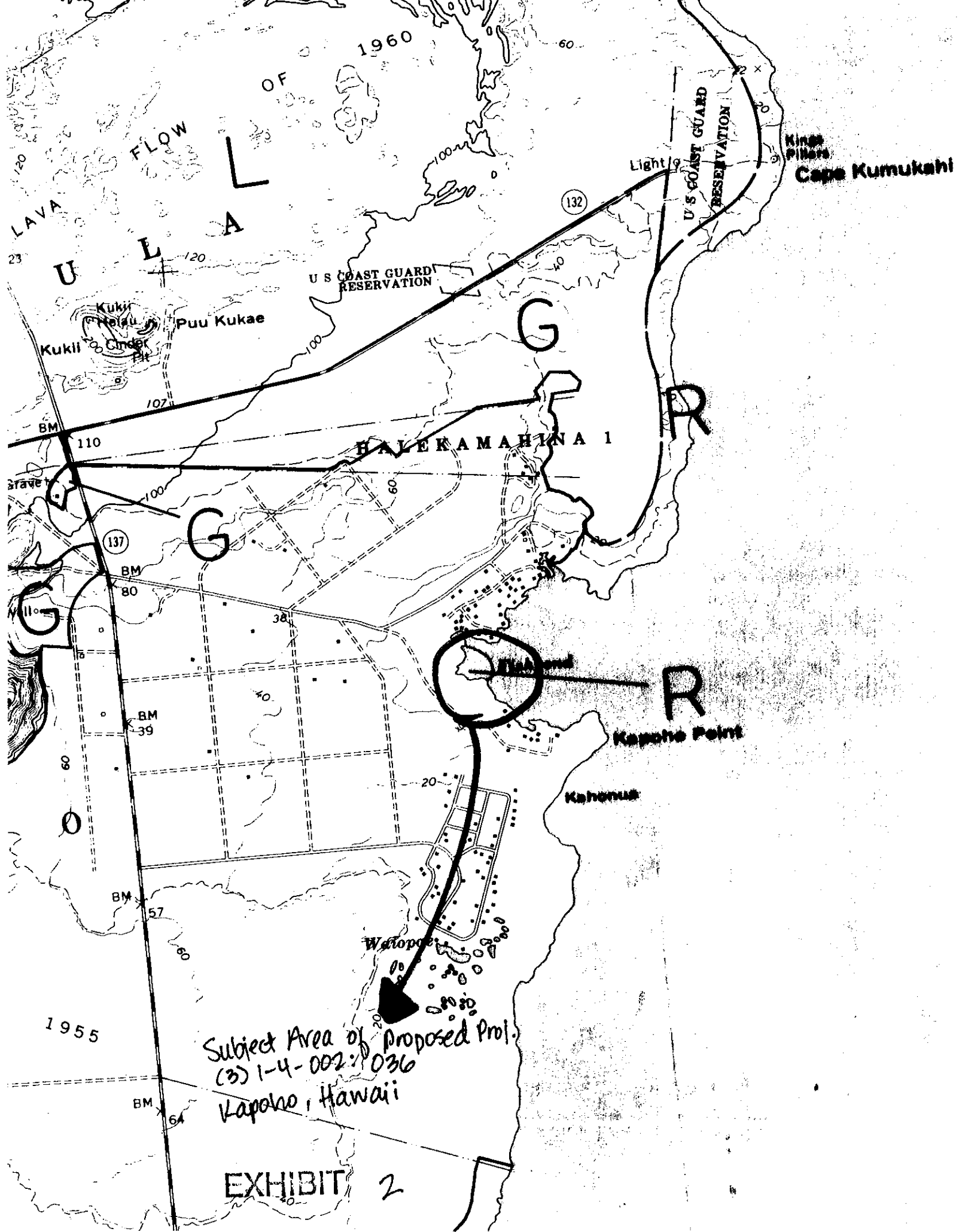


THIS WORK WAS PREPARED AT 100
 ON THE 25th DAY OF MAY 1976.
 DOROTHY J. MURRAY
 Tax Map Key: 1-4, 02, 25
 May 25, 1976

HAWAII

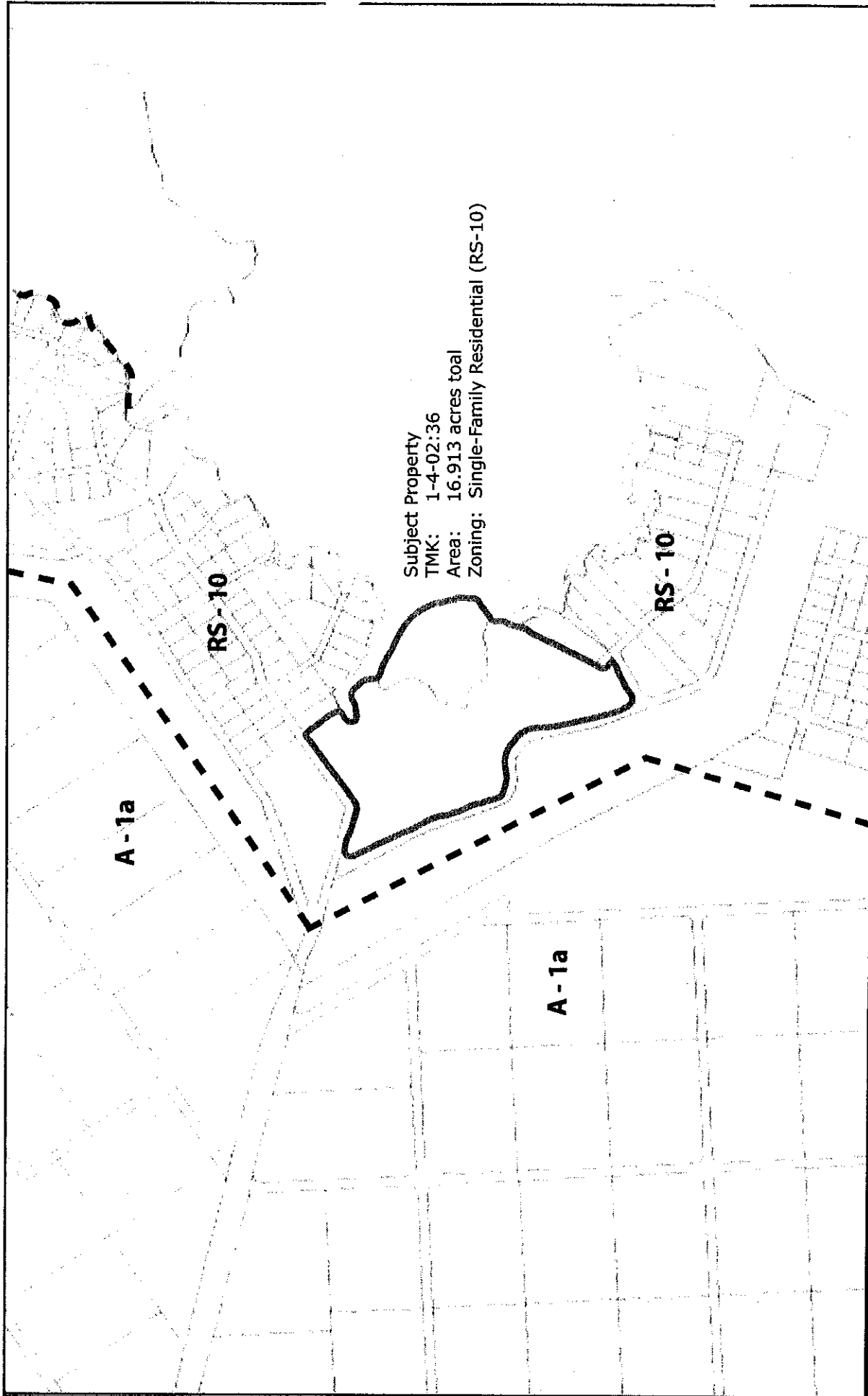


Subject Area Project Area
TRAC: (3) 1-4-002: 036
Kaula, Hawaii



Subject Area of Proposed Proj.
(3) 1-4-002: 036
Kapoho, Hawaii

EXHIBIT 2



Subject Property
TMK: 1-4-02:36
Area: 16.913 acres total
Zoning: Single-Family Residential (RS-10)

FIGURE 12

County of Hawai'i Zoning (SFR - RS-10)

Source: State of Hawai'i GIS

Kapoho Fishpond Restoration Project

Kapoho, Puna, Hawai'i

Farber & Associates, 8/2007.

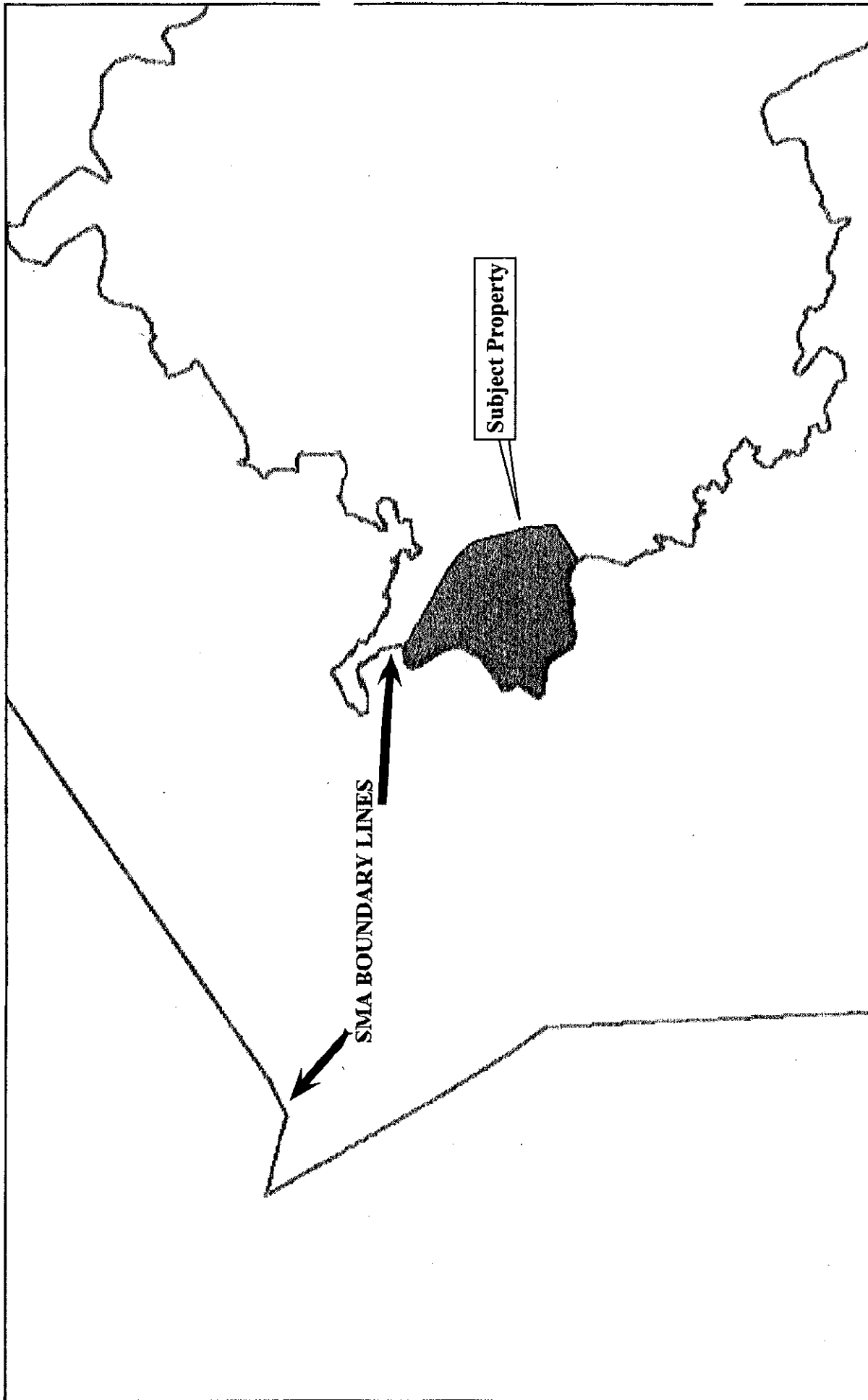


FIGURE 13

Shoreline Management Area (SMA) Boundaries

Source: State of Hawai'i GIS

Kapoho Fishpond Restoration Project

Kapoho, Puna, Hawai'i

Farber & Associates, 8/2007.

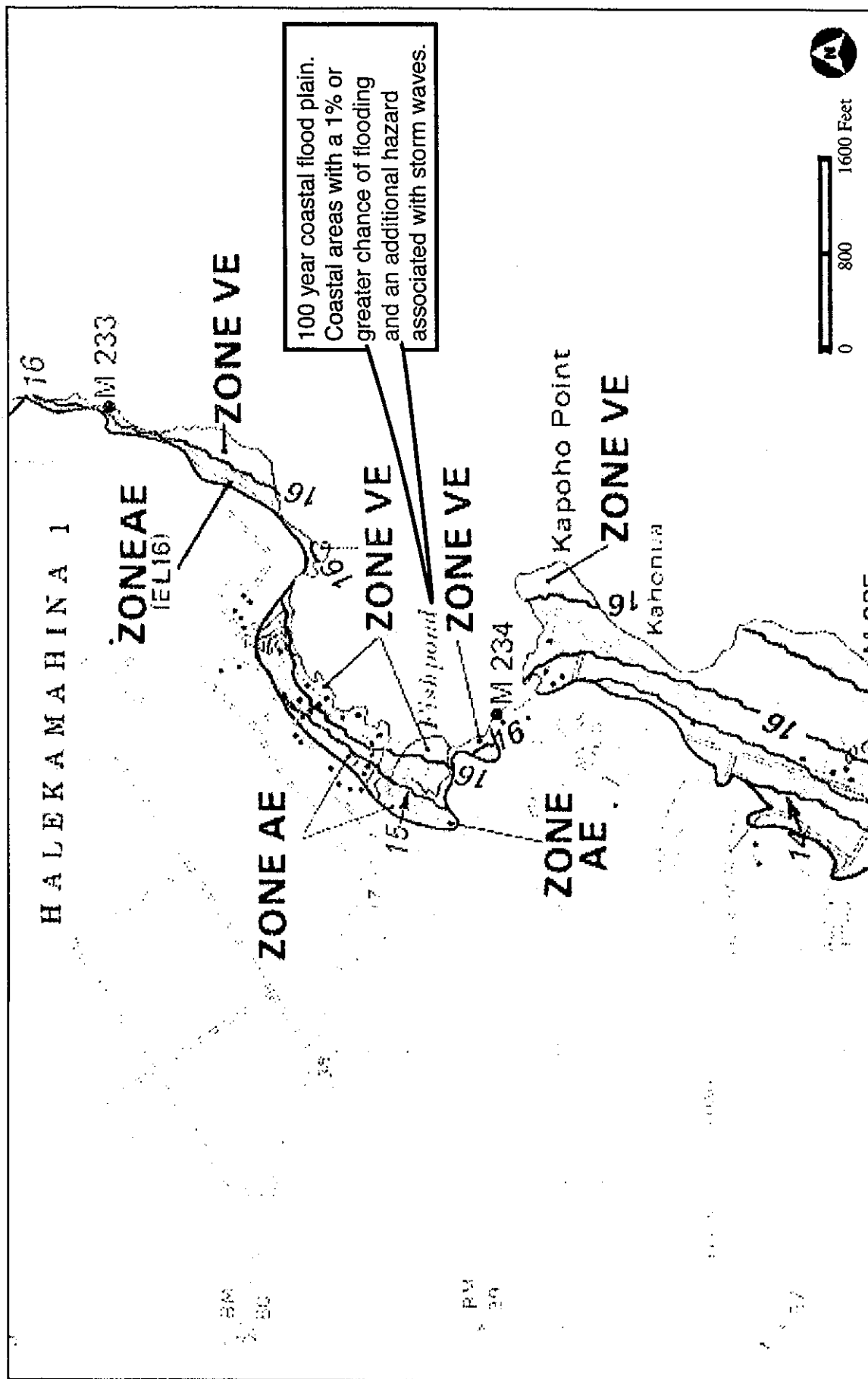


FIGURE 36

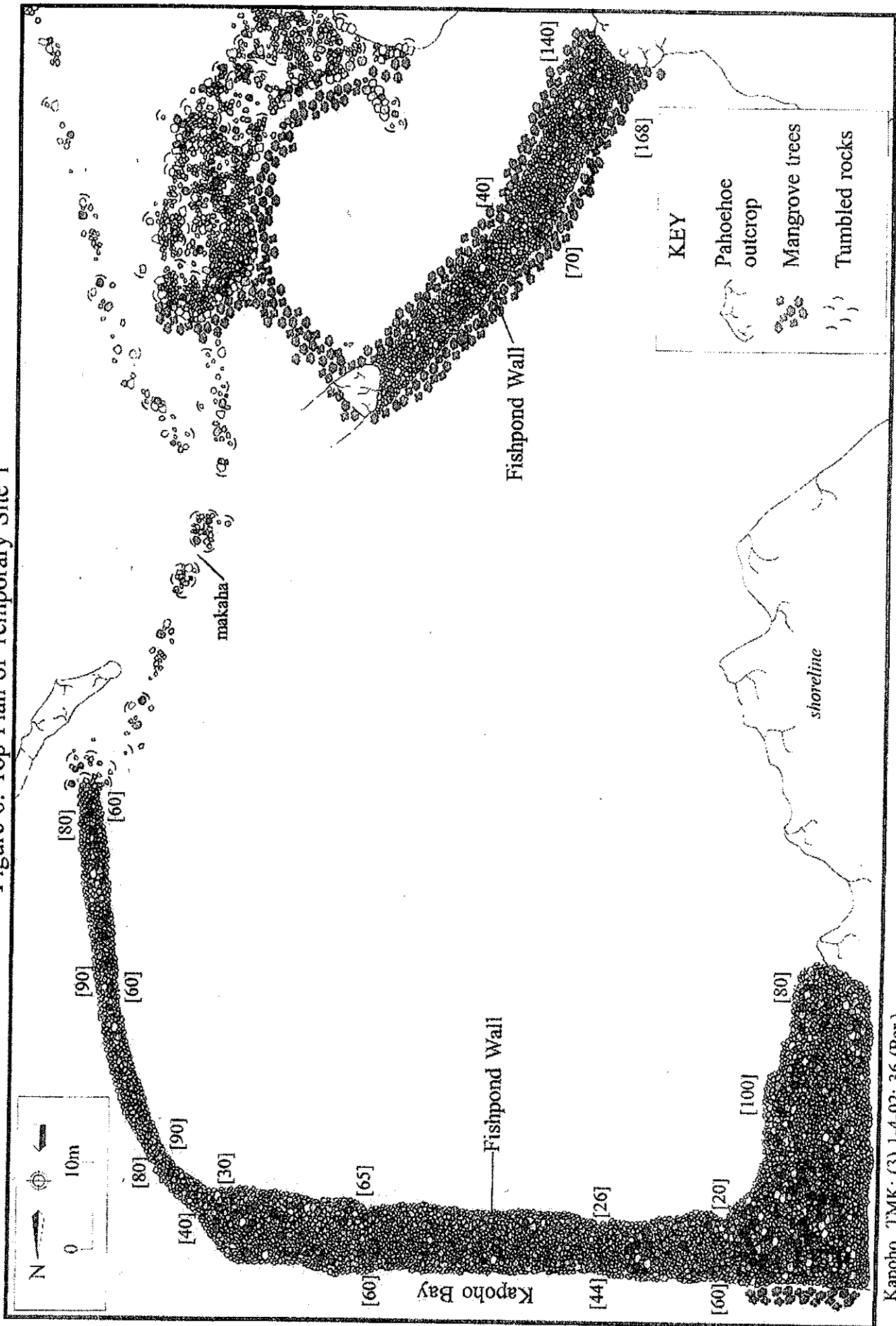
Flood Zone Map

Source: County of Hawai'i

Farber & Associates 7/2007

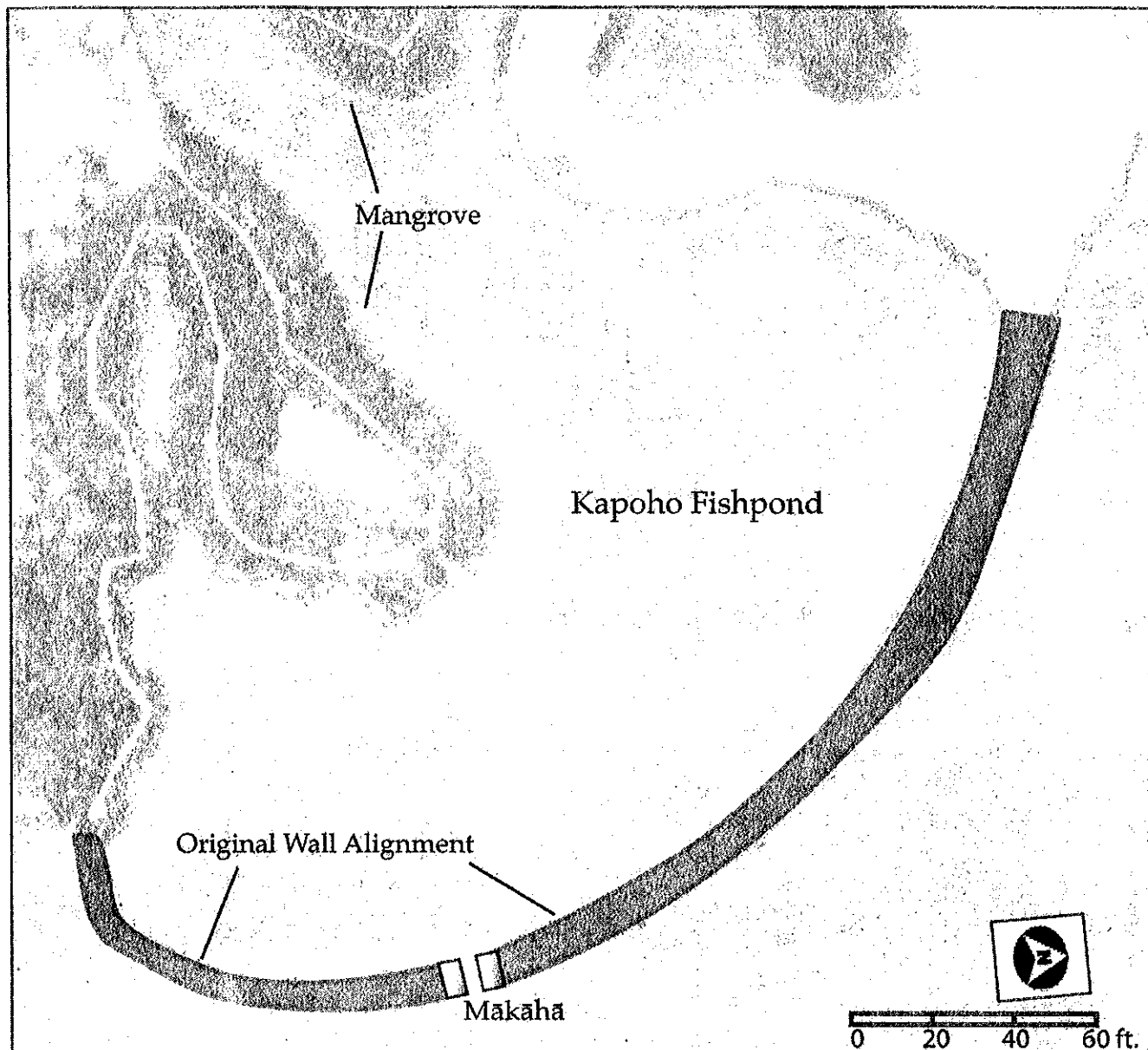
Kapoho Fishpond Restoration Project
Kapoho, Puna, Hawai'i

Figure 6: Top Plan of Temporary Site 1



Kapoho TMK: (3) 1-4-02: 36 (Por.)

Archaeological Consultants of the Pacific, Inc. 2007



SITE PLAN

Kapoho Fishpond. Size: 4.3 acres, wall length 1,250 feet.

Purpose: Restore and rebuild the fishpond wall for historic and cultural preservation and to serve as a marine sanctuary (a no fishing zone).

Method: By hand following the existing wall alignment and design, uhaū humu pohaku, the traditional mortarless dry-stack rock wall style.

Dimensions: 6 feet tall, base width 10-12 feet, crown width of 5 to 6 feet. All rocks to rebuild the wall are available on-site.

On-going maintenance includes manual removal of mangrove from within and surrounding the fishpond basin (green areas).

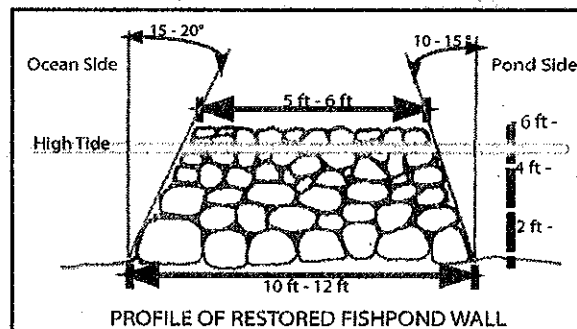
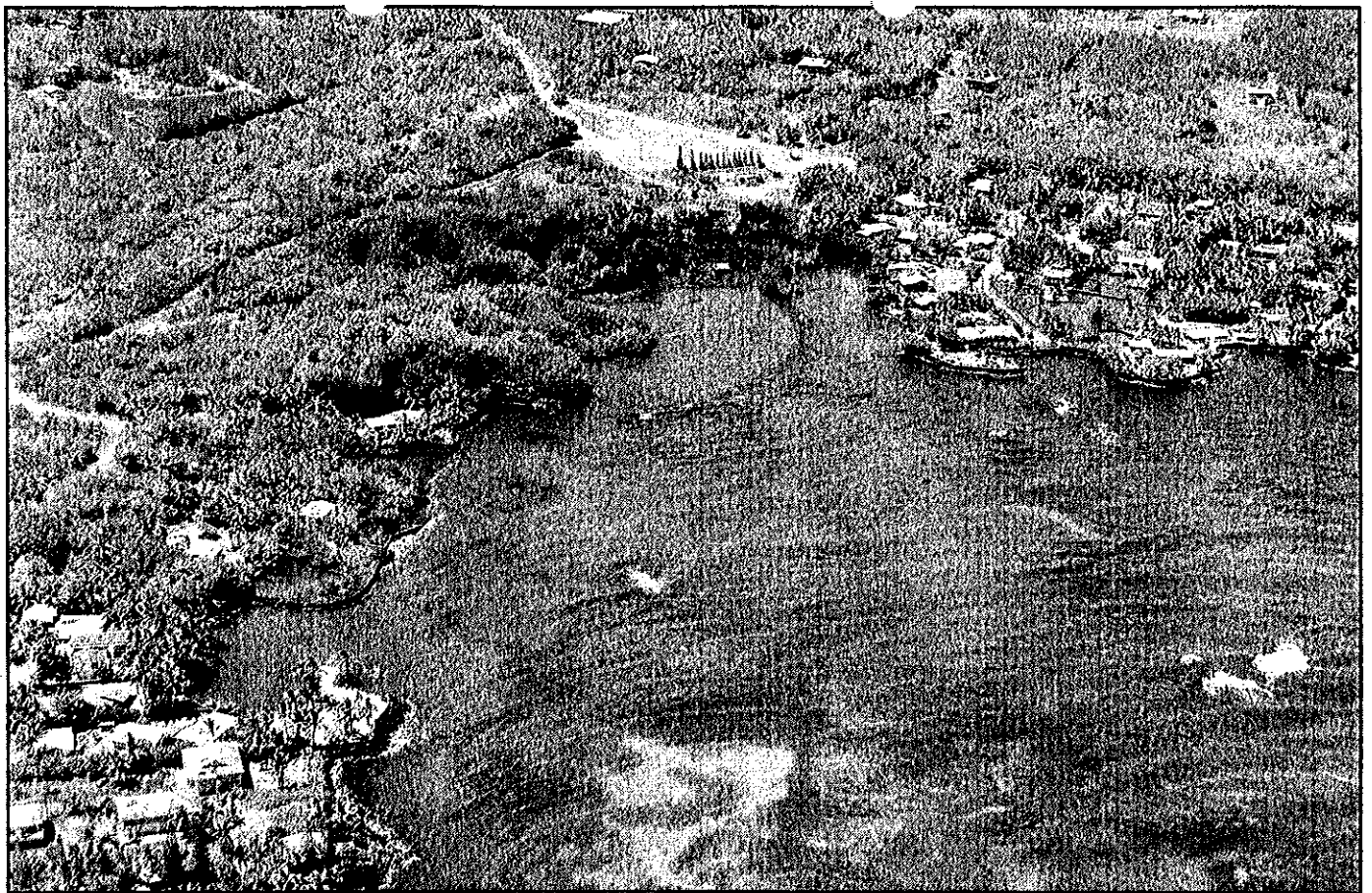


FIGURE 15 - SITE PLAN

Kapoho Fishpond Restoration Project
Kapoho, Puna, Hawai'i

Base Map Source: R.M. Towill Corp.
Farber & Associates 8/2007



Figures 7 & 8. Aerial View of Southern Kapoho Bay and Close-up of Subject Fishpond at High Tide (Brian Powers/Hawaiian Images Photography).





Figure 9. Aerial View of Kapoho Fishpond Circa 1970. Note intact wall and islets that are now covered in mangrove (Ford 1973).

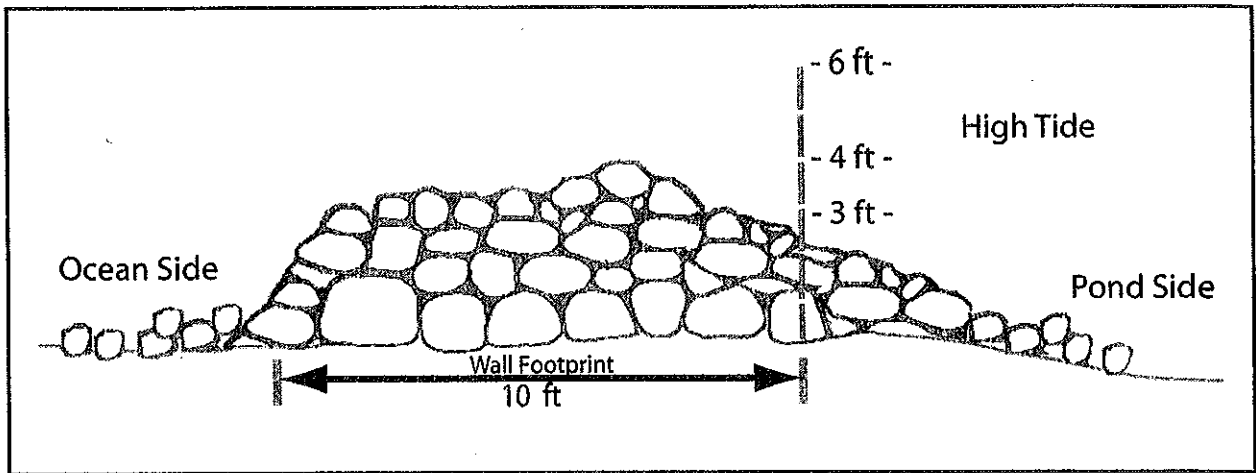


Figure 16. Kapoho Fishpond . Cross-section of Existing Wall.

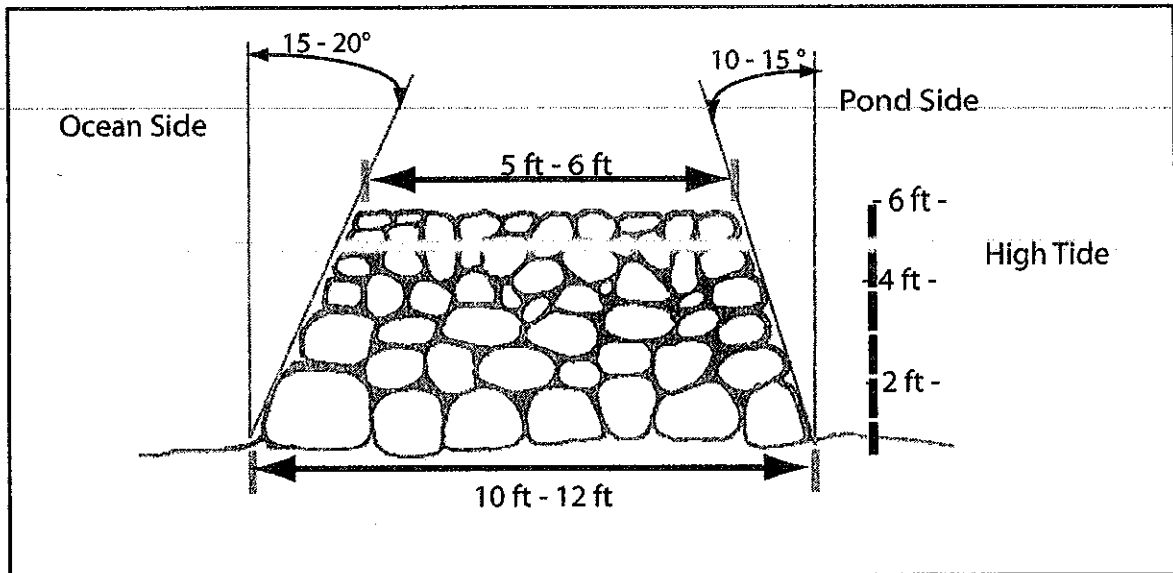


Figure 17. Kapoho Fishpond . Cross-section of Restored Wall.

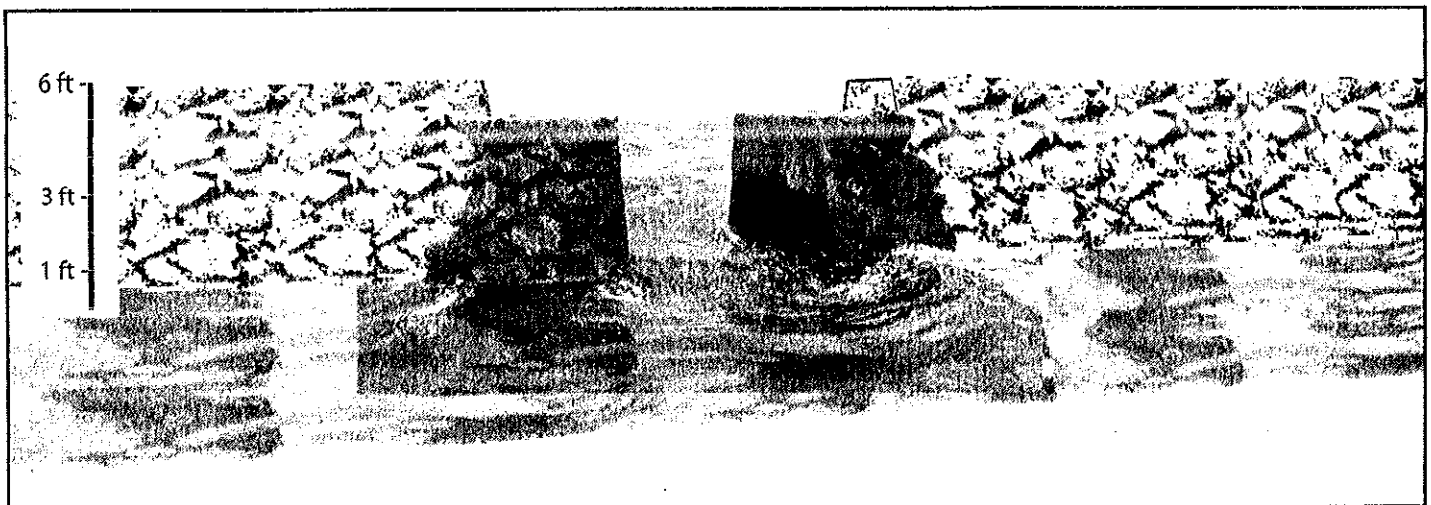


Figure 18. Kapoho Fishpond . Restored Wall at Mākāha Looking Makai. Note that the wall will be rebuilt one foot higher than the existing mākāhā to assure the wall will be exposed at high tide (blue line is approximate high tide).

Three Views of Fishpond Wall Moving from North to South at Low Tide.



Fig 19. Beginning of Fishpond Wall at Northern End Where it Meets the Shoreline.

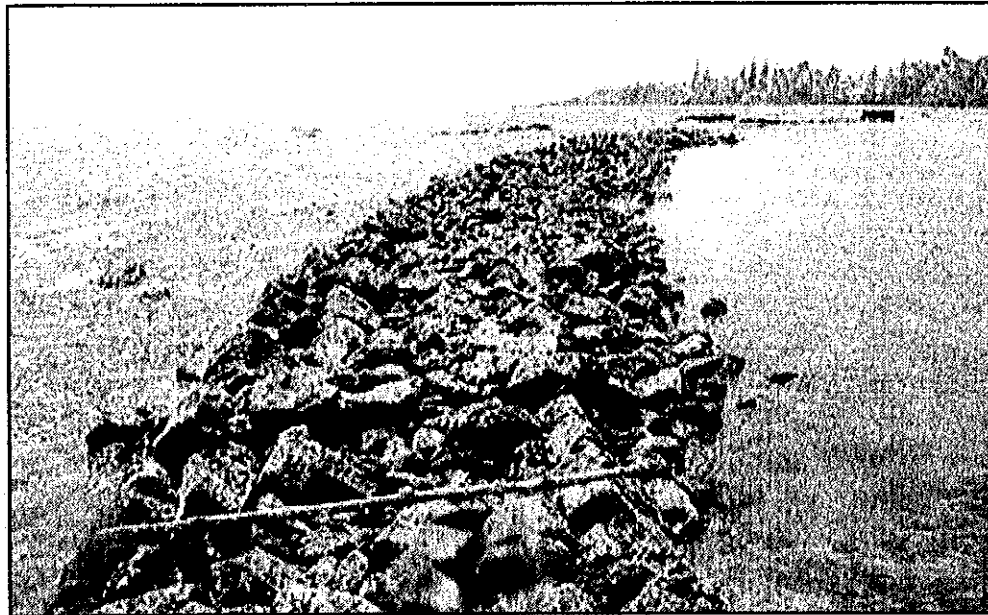


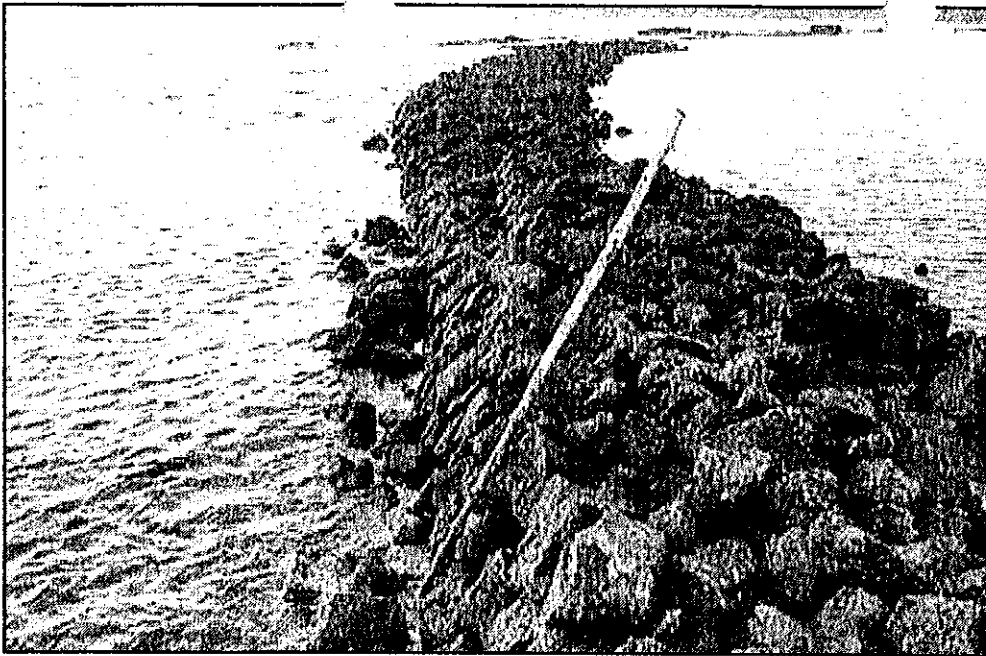
Figure 20. Next Portion of Wall Moving South. This section of the wall is the best preserved. Note the uniformity of the outer wall line.



Figure 21. Wall with Makāhā in the Background. This Section of wall is exposed to high wave energy thus many of the wall stones are found inside the fishpond basin. The horizontal rock formation in the background right before the makaha is exposed reef.

ROCK WALL DETAILS

Fig 22. Outside Wall Facing. Note wall angle and alignment relatively intact.

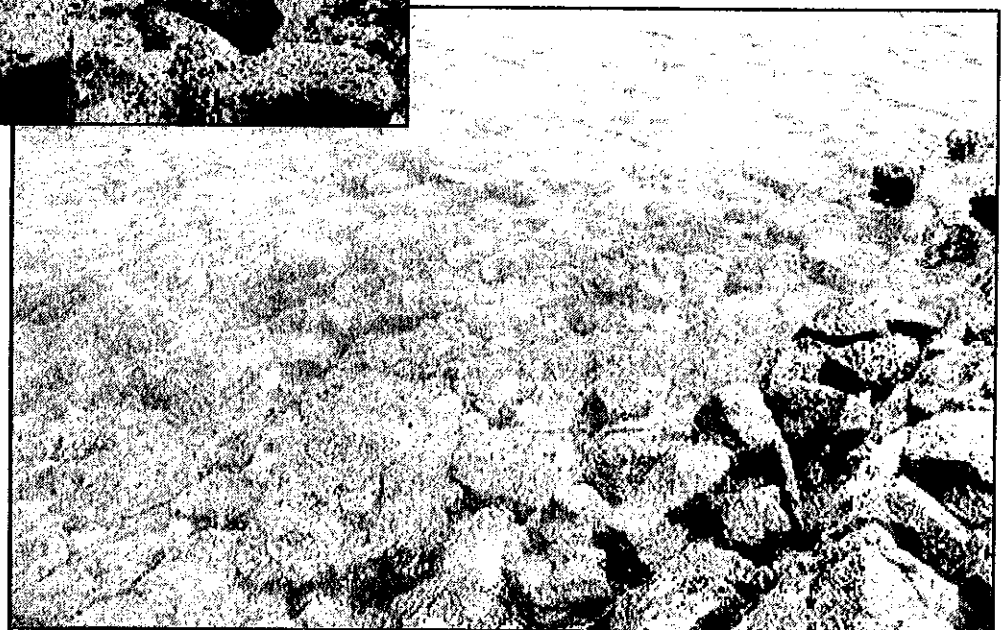


Most of the fishpond wall is 3 to 4 feet high. The wall is proposed to be restored and rebuilt at a uniform height of 6 feet.



Figure 23, left, Inside Wall Facing. Inside wall alignment much less defined than outer wall. Many of the rocks have tumbled off the wall and are in the fishpond basin due to storm surges and wave action.

Figure 24, right, Wall Footprint, Outside. Numerous wall rocks are scattered about three feet on both sides the fishpond wall. These rocks will be reused to repair the wall.



MĀKĀHĀ DETAILS



Fig 25. Mākāhā at Low Tide. Note at high tide mākāhā is completely submerged.



Figure 26. Detail of Northern Mākāhā.

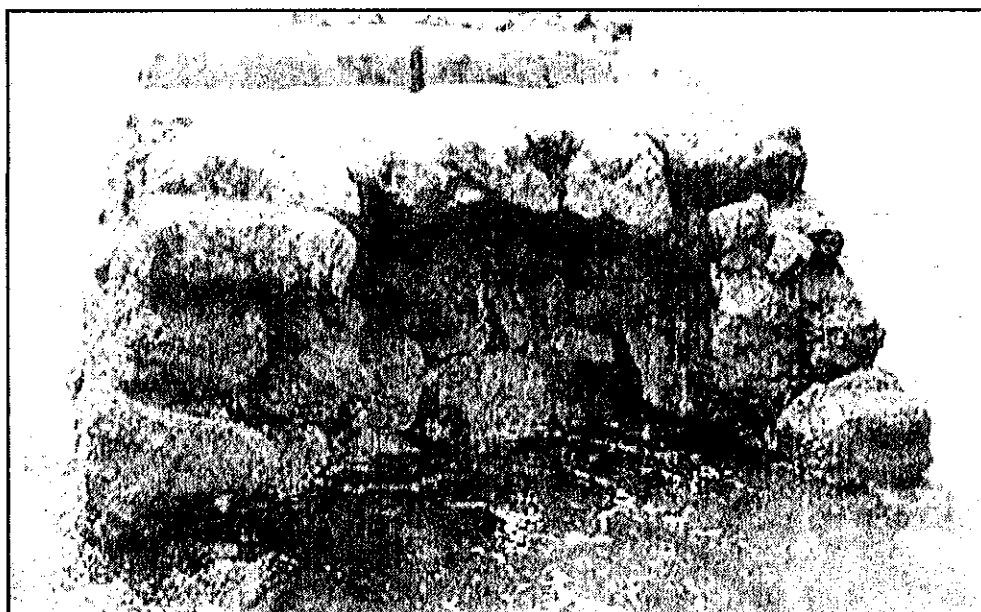


Figure 27. Detail of Southern Mākāhā.

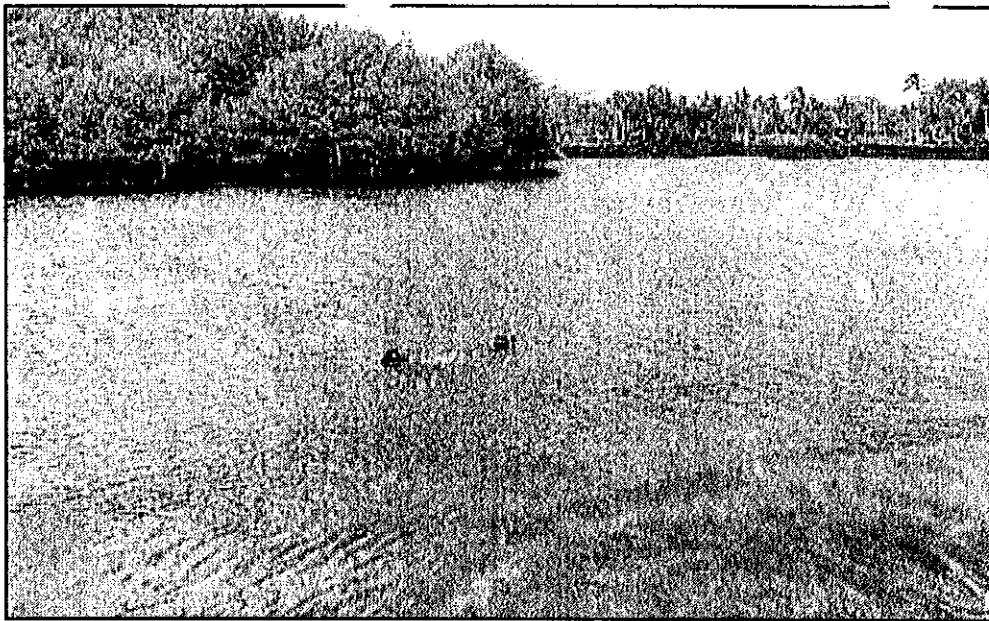


Fig 28. View of Fishpond Waters Looking West from the Makaha. Note extensive mangrove infestation in the foreground. Applicant's home is just barely visible on the far right.



Figure 29. Interior of Fishpond Basin, North West Corner. The peninsula in the foreground has been cleared of heavy mangrove infestation. The fishpond wall is just visible in the background (arrows).



Figure 30. Back of Fishpond basin west end. Percolating springs are visible in this area of the fishpond basin. Note western property line delineated by chain link fence (right above gentleman's hat).

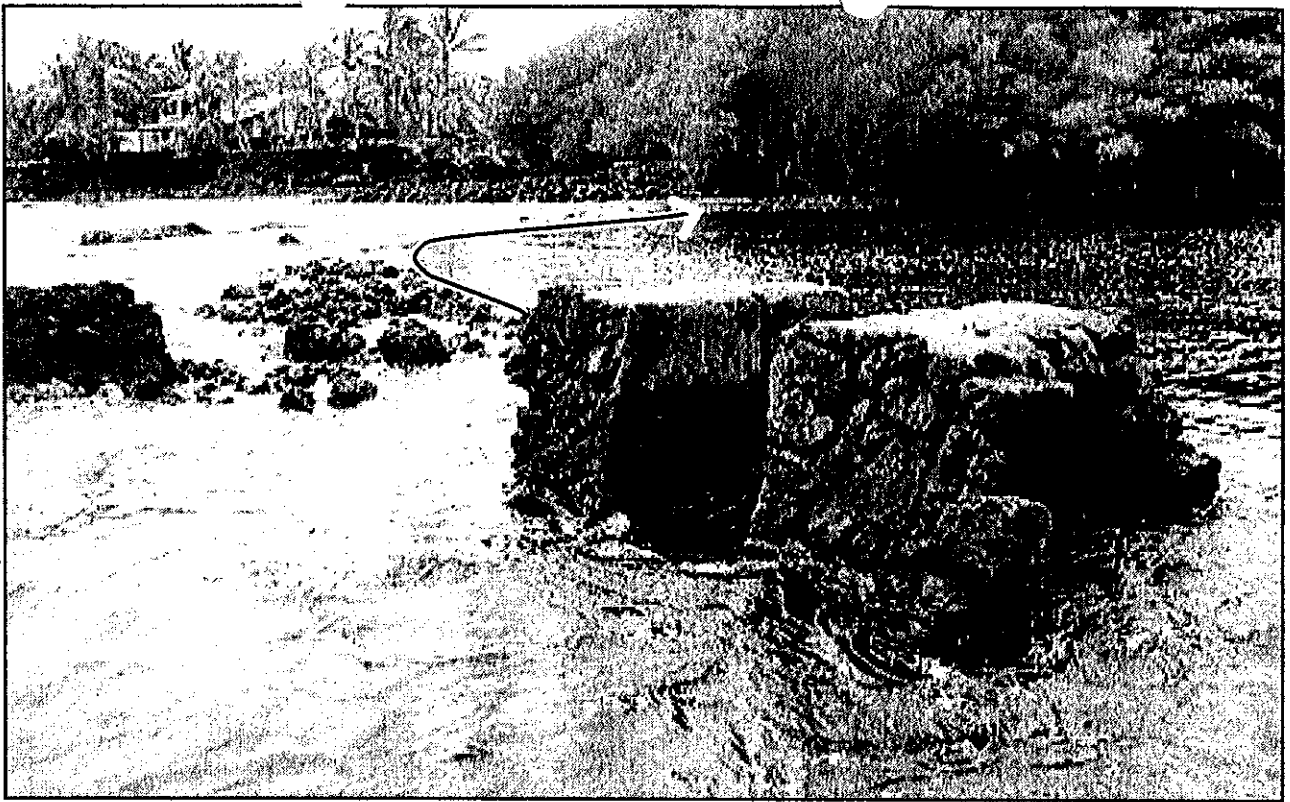
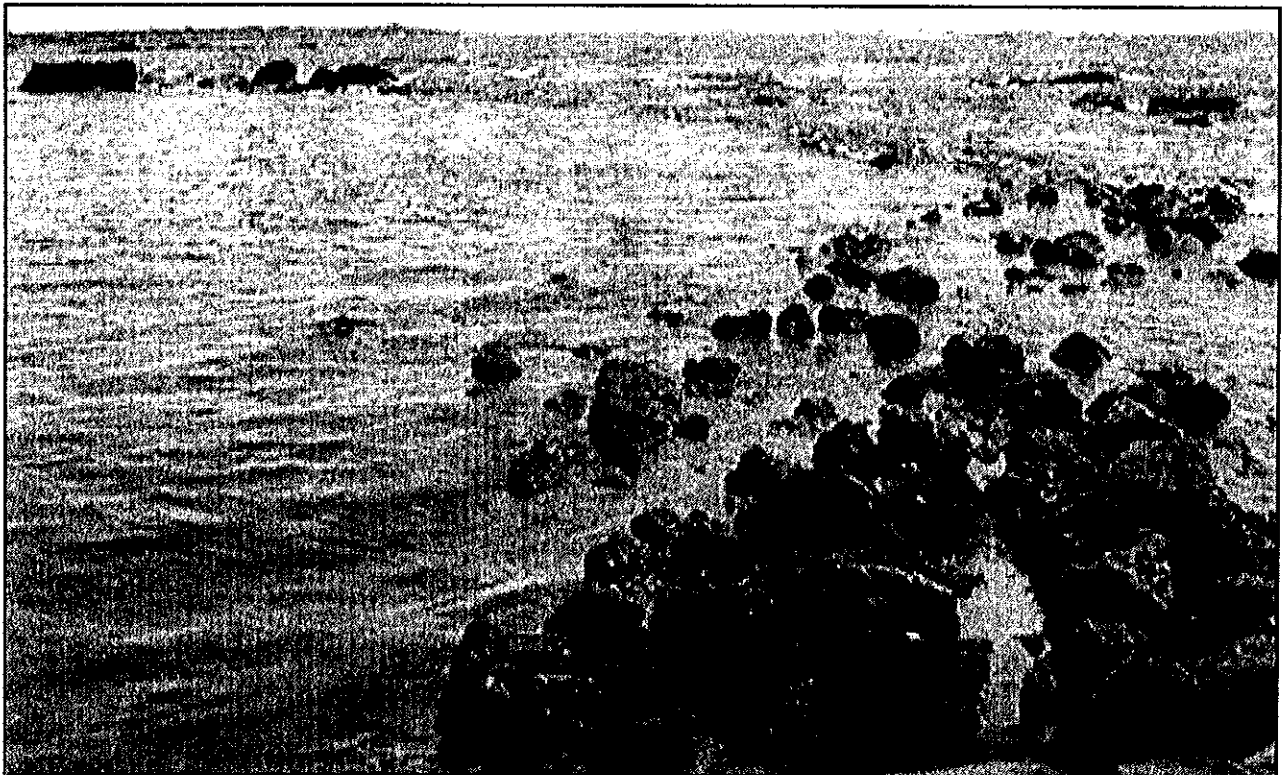
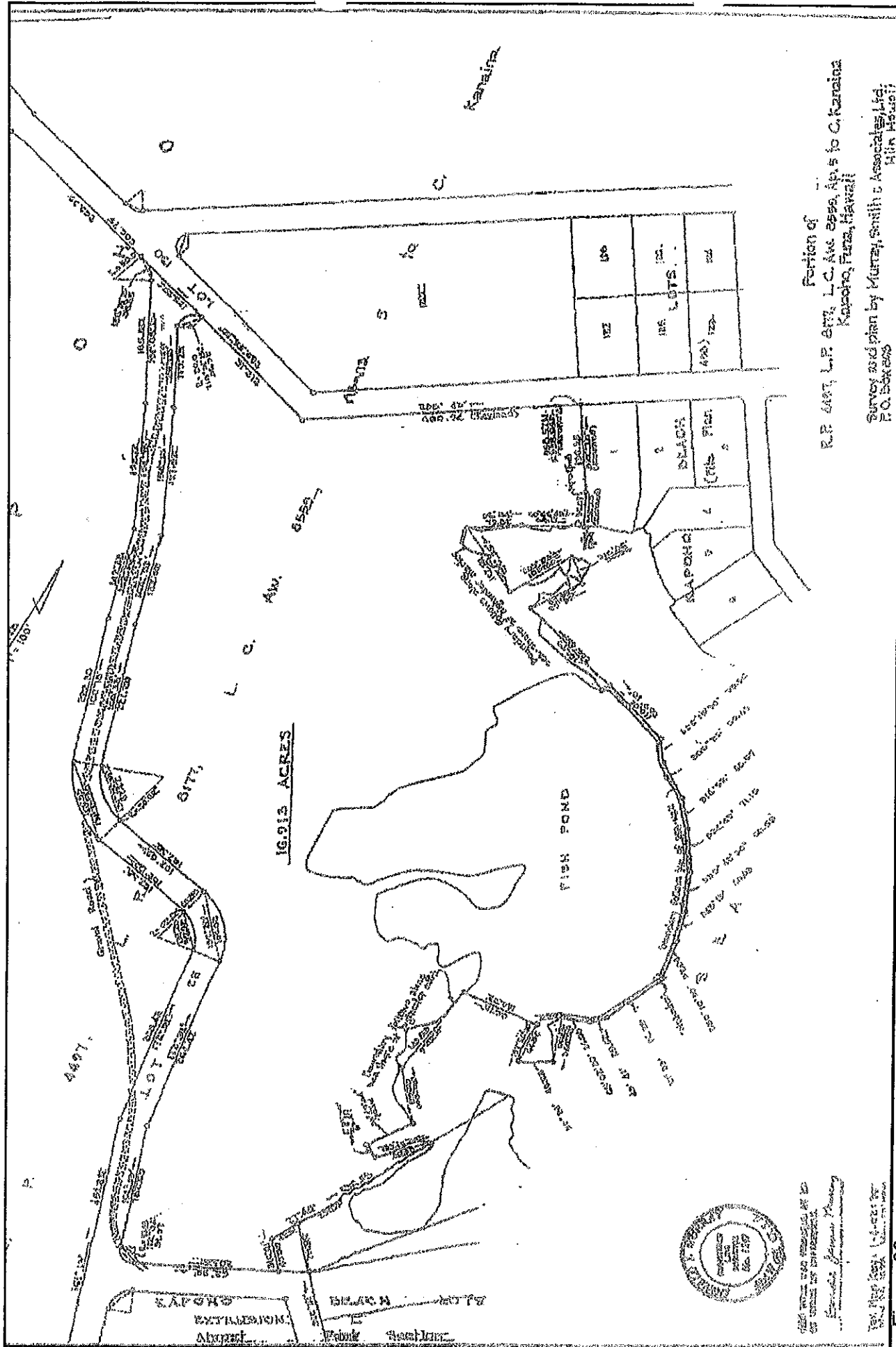
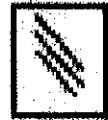


Figure 31, above, View of Mākāhā and Southern Portion of Fishpond Wall. Inside wall footprint is discernible as an arch containing the calm waters of the fishpond basin (yellow line). The southern terminus of the wall is at the edge of the mangrove (arrow).

Figure 32, below, View from the Southern Terminus of the Wall towards the mākāhā. Wall is in poor condition due to exposure to heavy wave energy and currents.







REPRESENTS
FUTURE MANGROVE
REMOVAL

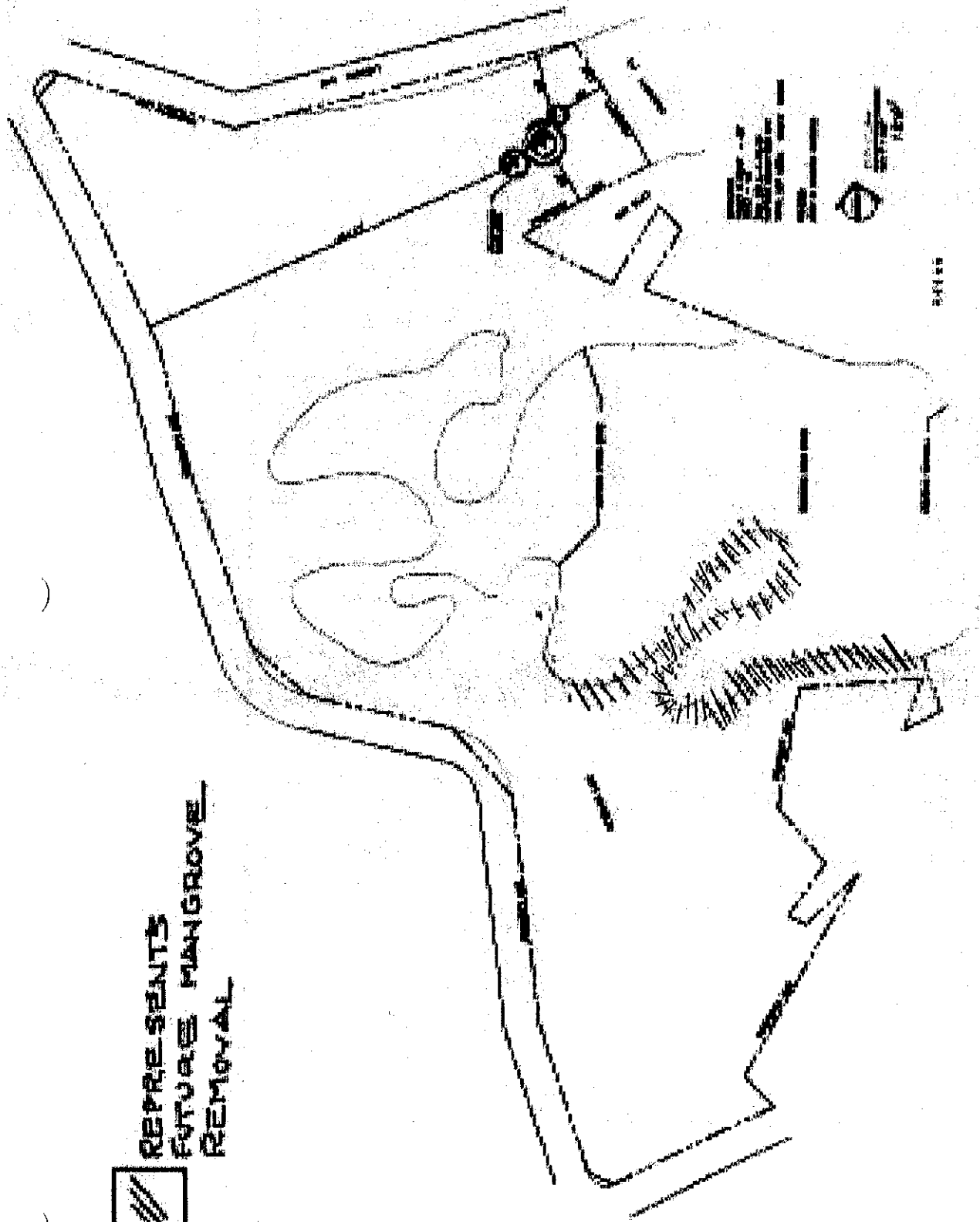
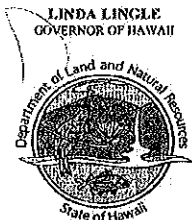


TABLE II - KAPOHO BAY AND FISHPOND FISH INVENTORY*Marine fish commonly observed inside and outside the fishpond wall at Kapoho.*

Hawaiian Name	Common Name	Scientific Name
Ama'ama	striped mullet	<i>Mugil cephalus</i>
Aholehole	Hawaiian Flagtail	<i>Kuhlia xenura</i>
Awa	milkfish	<i>Chanos chanos</i>
Awa aua	Hawaiian Tenpounder	<i>Elops hawaiiensis</i>
Hinalea lauili	Saddle wrasse	<i>Thalassoma duperrey</i>
Kaku	Barracuda	<i>Sphyrna barracuda</i>
Kihikihi	Moorish Idol	<i>Zanclus cornutus</i>
Kōkala, 'O'opu hue	Pufferfish	<i>Diodontidae and Tetraodontidae</i>
Kumu	Whitesaddle goatfish	<i>Parupeneus porphyreus</i>
Lai	Leatherback	<i>Scombroides sancti-petri</i>
Lauhau or Kikakapu	Butterflyfish	<i>Chaetodon</i>
Mamo, Kūpīpī	Sargent major damsel	<i>Abudefduf abdominalis</i>
Manini	convict surgeon fish	<i>Acanthurus sandvicensis</i>
Moa	Spotted Boxfish	<i>Ostracion meleagris</i>
Moana	Manybar goatfish	<i>Parupeneus multifasciatus</i>
Moi	Six-fingered threadfin	<i>Polydactylus sexfilis</i>
Nunu	Trumpetfish	<i>Aulostomus chinensis</i>
Ohua	Ornate wrasse	<i>Halichoeres ornatissimus</i>
O'io	Bonefish	<i>Albula vulpes</i>
Ornaku	Belted wrasse	<i>Stethojulis balteata</i>
Palani	Eyestripe surgeonfish	<i>Acanthurus dussumieri</i>
Papio	jack, trevally	<i>Family Carangidae</i>
Pualu	Ualu	<i>Acanthurus mata</i>
Puhi'ou	Banded Moray eel	<i>Gymnothorax rueppelliae</i>
Roi	Argus grouper	<i>Cephalopis argus</i>
To'au	Black tail snapper	<i>Lutjanus fulvus</i>
Uhu	Parrotfish	<i>Scarus perspicillatus</i>
Uouoa	sharpnose mullet	<i>Neomyxus leuciscus</i>
Upapalu	Cardinal fish	<i>Apogon maculifer</i>
U'u	Squirrelfish	<i>Myripristis berndti</i>
Weke'ula	Yellowstripe goatfish	<i>Mulloidichthys vanicolensis</i>

Marine fish commonly observed only outside fishpond wall:

Kala	Bluespine unicornfish	<i>Naso unicornis</i>
Maiko	Bluelined surgeon	<i>Acanthurus nigros</i>
Manini	Convict tang	<i>Acanthurus triostegus</i>
Mano lalakea	White-tipped shark	<i>Triaenodon obesus</i>
Na'ene'a	Orange spot wrasse	<i>Acanthurus olivaceus</i>
Nenu	Rudderfish	<i>Kyphosus cinerescens</i>
Palani	Dussumier's surgeon	<i>Acanthurus dussumieri</i>
Ta'ape	Blue striped snapper	<i>Lutjanus kasmira</i>



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

February 26, 2008 4/3/08

Mr. Joe Farber
Farber & Associates
2722 Ferdinand Avenue
Honolulu, Hawai'i 96822

LOG NO: 2007.4229
DOC NO: 0802TD24
Archaeology

Dear Mr. Farber:

**SUBJECT: Chapter 6E-8 Historic Preservation Review of a Conservation District Use Permit
Draft Environmental Assessment for Restoration of a Fishpond (SIHP Site 50-10-46-26413)
Kapoho Ahupua'a, Puna District, Island of Hawai'i
TMK: (3) 1-4-002: 36**

Thank you for the opportunity to comment on Draft Environmental Assessment (DEA) for this proposed restoration project. We apologize for the delay in responding to this submittal, which we received in Kapolei November 14, 2007, and in Hilo on December 26, 2007.

The DEA was prepared in support of an application for a Conservation District Use Application in connection with the restoration of the Site 26413 fishpond located at Kapoho Bay. The fishpond is privately owned and is subject to provisions of Hawai'i rules and regulations governing conservation district uses (HRS 343, HAR 13-5-2).

We have recently reviewed the draft archaeological inventory survey report that is attached as Appendix A to this DEA (*An Archaeological Inventory Survey Report for a Property Located at TMK (3) 1-4-002: 36 (Por.) in Kapoho Ahupua'a, Puna District, Island of Hawai'i*, C. Monahan, J.R. Moore and J. Kennedy, February 2007), and have requested some clarifications and additions to the report prior to our acceptance of a final (Doc No 0802TD13). We will also be reviewing a draft cultural impact assessment that is attached as Appendix B (*A Cultural Impact Assessment for a Property Located at TMK (3) 1-4-002: 36 Por. In Kapoho Ahupua'a, Puna District, Island of Hawai'i*, C. Monahan, J.R. Moore and J. Kennedy, February 2007). We understand that a preservation plan is also being prepared for the fishpond.

We support the goals and preservation philosophy of this restoration project and generally agree that it will have a beneficial effect on Site 26413, which is significant under multiple HRHP criteria. At this time, we would like to submit the following questions, observations and comments regarding the DEA:

Section 2.3: We understand that the project area conforms with the boundaries of a private property parcel, and that a 1999 civil survey of the property boundary shows it following along the top of an arc-shaped fishpond wall (Figure 4 of the inventory survey). The archaeological site map provided in the attached report depicts the wall as being more angular and irregular in shape, with the fishpond wall on the inland side of a second line of rubble that appears to be more in line with the property boundary line. We would like some clarification as to which of these two walls will be restored. Based on the current information provided, it appears that the more intact wall section may be removed to reconstruct a wall along the property boundary. Please provide a map showing the property boundary line and the proposed wall reconstruction alignment on the archaeological map of the site.

Section 3.1: The restoration project as described involves five steps, the first of which is the "...retrieval, movement and alignment of wall foundation rocks from within the pond basin and along the original wall footprint" (p. 22). We are assuming that the "original wall footprint" referred to here is the alignment shown in Figure 15 of the DEA, and in Figure 4 of the inventory survey report. As shown in Figures 7 and 8 of the DEA, there are apparent submerged undocumented cultural features very close to the fishpond that could be impacted by the movement/removal of stones during this project. We request that the EA be clarified to state that the area of stone movement will be confined strictly to the subject private property and subject pond wall (with clarifications as noted above). If this is

EXHIBIT 6

not feasible or is not the intent, additional archaeological survey work will be needed to document potentially significant features that adjoin or are close to the wall, prior to the movement of rocks from these adjacent features.

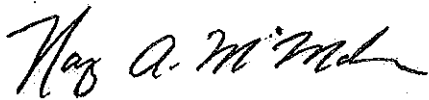
The last paragraph of this section states that more rocks will be required than what exist along the wall footprint, and that, "There are more than enough rocks on site to complete the fishpond wall" (p. 23). We request clarification of this statement. Does "on site" refer to the subject land parcel, or to a generally broader submerged area? If the additional rocks referred to are located on land, where on the subject property are they located? We note that the inventory survey for this property did not include the entire 16.9-acre parcel, but a 2.8-acre dwelling site and the 4.3-acre fishpond. We would like some assurance that the stones to be used in the restoration are not part of an unidentified historic site that is located on lands or under waters that were not included in the inventory survey.

Section 3.1.2: This section on community support is somewhat brief (two sentences) and does not include all of the major topics that were brought up in the interviews found in the cultural impact assessment. Furthermore, not all of the informants were in agreement that the rebuilt fishpond would be "a positive". We would like to see a more detailed breakdown of the opinions voiced in the interviews. It would be helpful to state how many informants were interviewed (five), and to provide information as to why these five people are representative of the community. We would also like to see better treatment of the various topics discussed, such as access to the shoreline and fishpond area for traditional or educational purposes, the long-standing private ownership of this area, questions regarding the purpose of the restoration, and current ocean conditions. We also question as to whether the informants were told or made aware of the fact that the restored pond would become a "no fishing zone", as stated on page 26 of the DEA.. Some of these topics could be addressed in the cultural impact assessment.

Section 3.2.4 The fishpond is described as being deteriorated due to forces of nature, alterations by man and general neglect. It is stated that, "This is atypical of the coastal fishponds found throughout the state that have not been maintained" (p. 27). We believe that this pond is typical, rather than atypical. We agree that the No-action alternative would result in the eventual loss of this cultural resource, and we concur that continued neglect would be an adverse effect to the site.

Again, we apologize for the delay in responding to this submittal and for any inconvenience it may have caused. Please contact Theresa Donham at (808) 987-5001 if you have any questions or concerns regarding this letter.

Aloha,



Nancy A. McMahon, Acting Archaeology Branch Chief and Administrator
State Historic Preservation Division

6092

BARBARA BELL

RR 2 Box 3881, Pahoa, HI 96778
808.965.7776 - bbellster@gmail.com

RECEIVED

08 FEB 11 12:56

February 7, 2008

Ms. Laura H. Thielen, Chairperson
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Re: Comments on Draft Environmental Assessment
Kapoho Bay Fishpond Restoration Project
CDUA application HA-3447
Tax Map Key (3) 1-4-002-036 (Kapoho, Puna, Hawaii)
Applicant: John Barsell

RECEIVED
CONSERVATION
LANDS
2008 FEB 12 A 9:50
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Ms. Thielen,

I am writing to formally comment on the above referenced project for rebuilding a currently unused fish pond at Kapoho Bay. I have some questions regarding fish habitat, the viability of a fish nursery, and whether this project will actually replenish the bay. However I will leave these aside and trust that DLNR and other experts will address these issues in the best way possible. I applaud all efforts to improve the ecology of the bay. My comments are concerned with access.

The applicant must realize that many in the community at large will see this project as at least a partial negative, as a taking of public land. This is because the public, including myself, doesn't care for the concept of submerged lands being legally owned by a private party. The idea that is well established in Hawai'i is that everyone is allowed use of the ocean, as well as a small amount of shoreline. A run down, non-working fishpond doesn't seem like it would qualify as private property, since it obviously is in the ocean.

Should this application be granted, I suggest that the applicant let it be known to the public that anyone who is interested in seeing a re-constructed fish pond is allowed to visit. In particular, students of Kamehameha Schools, UH marine biology classes, Pahoa Elementary and High School science classes, the Kapoho Charter School, and other legitimately interested non-

Page 2

Department of Land and Natural Resources


February 7, 2008

profits, students, citizen groups, and individuals are given access two full days per month, or more. This would go a long way in reversing the image that the owners are merely putting up a large "Keep Out" sign, in the name of culture and history. We all know that they will want to post actual "Keep Out" signs on or near the wall, however a condition of their permit of additional signage to inform the public how they can legally visit the fish pond, with current contact information, would soften the blow.

I assume that the applicant is sincere about providing a community benefit, rather than solely asserting their private property reach, and will take these comments in the spirit that they are meant, to strengthen our community by sharing the common cultural heritage of this area, be it on land or in the sea.

If there is a format for updates, I would appreciate being informed of the progress of this project, either by mail or email. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara Bell", written in a cursive style.

Barbara Bell

Kapoho Beach Lots resident

cc via USPS: OEQC

cc via email: Sandy and John Barsell
Farber and Associates

YAMANAKA ENTERPRISES, INC.

April 16, 2008

Mr. Joseph Farber
2722 Ferdinand Ave
Honolulu, Hawaii 96822

REGISTRATION
STATE LANDS

Subject: Draft Environmental Assessment-Kapoho Bay Fishpond Restoration Project,
Kapoho, Puna, Hawai'i: TMK: 1-4-2:36

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Farber,

In response to your letter dated February 15, 2008 which referenced our comments to the Draft Environmental Assessment (1-7-08) and which was received post marked March 29, 2008 please find the following response to your comments:

We described the mangrove growth as a protected breeding area that had not previously existed. Your response that mangrove is an invasive specie does not refute the fact that it has created a sanctuary and breeding area that did not exist before. The anoxic sediment may not support life but marine life abounds in the environment created by the mangrove above the sediment. On the sediment shrimp and crabs abound.

The owner has cleared much of the mangrove growth along the waters edge and into the water. We saw no record of any permit from the State of Hawaii allowing such clearing. We would assume that before such work could begin an environmental assessment should have been filed with the State.

Our family use of the area continued after the Lease of the area ended in the mid 1960's. By the late 1960's the pond was not operating as a working fishpond and there was no exclusionary use since even at low tides the pond was open to seaward access. The many residents in the area did not obtain owner's permission to access the pond.

Your statement that "the fishpond wall has not ceased to exist" is incorrect. The wall even at low tide has not existed in many areas since the 1970 or earlier.

On Adverse use: your statement that "seasonal visits" would not qualify as continuous and exclusive use is mistaken. Our description of "seasonal use" is consistent with traditional fishing practices in Hawaii since time in memorial. The harvesting of certain species have always been on a seasonal basis. During different times of the year that area would be used for mollusk (opae, he'e, etc.) and different species of fish. Since 1970 we have used that property when we needed to gather what we needed.

The reason we have never met the owner is that our access has been from the sea. Our access to that area has occurred during low and high tides since there is no existence of any physical barrier between the sea and the shore.

Mahalo

Vern Yamanaka

CC: Laura H. Thielen, Chair, Department of Land and Natural Resources, John Barsell